



‘WHOSE JUSTICE?’

THE WOMEN OF BOSNIA AND HERZEGOVINA ARE STILL WAITING

**AMNESTY
INTERNATIONAL**



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Cover photo: Bosnian Muslim women calling for justice outside the offices of the International Criminal Tribunal for the former Yugoslavia, Sarajevo, July 2008.

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1. INTRODUCTION

“What was I guilty of when I was only 14 years old? What did I do to anybody? I was at the point of his knife and I prayed to God for him to kill me. The worst was when I was taken away from my father. I thought I would never come back alive. I saw how they bound my father’s hands with wire and how he could not help me. His tears remained in my memory forever and I will never forget this. And the soldiers. Their uniforms, their masks. All of this, I will never forget.” - Sabiha¹, interviewed by Amnesty International in the Federation of Bosnia and Herzegovina (FbiH) in March 2009.

“I do not know if it is possible to punish this crime. If justice exists at all?! Dear God I hope it does! Maybe somewhere but not here in Bosnia! Not here! Here there is no justice at all!”- Bakira, interviewed by Amnesty International in FbiH in March 2009.

“People say we should let it out, that we should express our pain. It is not that easy. It is impossible to forget. I have been in therapy for three years now. If it wasn’t for the psychological support and the medicine, I would not be alive. Before the therapy I felt as if I was dead. I was hiding the shame and humiliation. I kept all this bad feelings inside, but they would not disappear.

I can’t sleep without pills. I still get upset easily when people mention the war. An image, a memory, a TV spot can be a spark. I can’t stand it. I can’t deal with this on my own. I have to run away from children not to shout at them. I don’t want my problems to affect them. I need help.” - Tanja, interviewed by Amnesty International in Republika Srpska in March 2009.

This report documents how the authorities in Bosnia and Herzegovina (BiH) have neglected their obligation to provide justice and reparation to survivors of war crimes of sexual violence which took place in the context of the 1992-1995 war. In doing so, the authorities have violated the human rights of these survivors.

The government of BiH has failed to ensure justice and reparation for thousands of women who were raped during the 1992-1995 war. A continuing failure to comprehensively investigate and prosecute crimes of sexual violence before international and national courts means that those responsible still manage to evade justice and impunity prevails. Without meaningful justice and full and effective reparation, victims continue to suffer the effects of these horrific crimes. Antiquated discriminatory laws and procedures result in survivors not being treated with dignity or given protection and support. In most cases they face stigmatization rather than the recognition and vital assistance they need to help them rebuild their lives.

Despite the fact that the war in BiH finished more than 13 years ago many perpetrators of war crimes of sexual violence continue to enjoy impunity and often live in the same communities as their victims. Many survivors of those crimes suffer post-traumatic stress disorder and other psychological and physical problems. Psychological support is often not available and access to health services is limited, especially for women living in remote areas of the country. Many survivors are unemployed, often for reasons related to the physical and

psychological injuries they have suffered. They often live in poverty and cannot afford medicines. Rape continues to be a taboo subject in BiH and survivors of this crime are stigmatized by society.

After the war the focus of national attempts to apply the law, motivated by local demands and international support, was on bringing perpetrators to justice. This process has had its own successes (in the form of several prosecutions and convictions) and shortcomings (which are analyzed in-depth in this report). Respect for the survivors' right to reparation for the crimes committed against them is not only required in international law, but is also important in assisting the victims to deal with the past and to move on with their lives. Yet neither the state nor the international community have made reparation to the victims a priority. The persistence of stigmatization and ostracism from society also needs to be addressed as part of their right to reparation. Amnesty International has found that the victims' perception of the justice process (and their well-being in general) is influenced not only by what happens in the justice system but also by how the authorities and society responds to their needs.

Support for victims through reparation for past injustices cannot be separated from the right of access to justice - the two are linked.

In 1993, Amnesty International documented the occurrence of rape and other war crimes of sexual violence on a massive scale during the war in BiH.² Since then the organization has been calling on the BiH authorities and on the international community to ensure that those responsible for war crimes, ³ including rape and other forms of sexual violence, are promptly brought to justice and prosecuted in accordance with international fair trial standards.

In December 2008 Amnesty International delegates visited BiH to conduct field research on the legacy of war crimes of sexual violence. In the course of this research they interviewed survivors of war crimes of sexual violence, more than 20 persons representing associations of survivors and, non-governmental organizations (NGOs) that support survivors. They also talked to the BiH authorities and representatives of the international community.⁴ In March 2009 further interviews with survivors of war crimes of sexual violence were conducted and a consultation meeting with BiH NGOs was organized.⁵ During their visit in March 2009 representatives of Amnesty International also conducted additional meetings with NGOs, government officials and representatives of the international community.⁶

While men as well as women were subjected to rape and sexual violence during the conflict, Amnesty International has focused its research about the legacy of such war crimes on women survivors, due among other reasons to the lack of availability of sufficient documentation of sexual violence perpetrated against men. Amnesty International's research and number of studies indicate the unwillingness of male survivors to talk about their war time experience, mostly caused by stigmatization related to the abuses perpetrated on them.⁷ The organization believes, however, that research focusing on men survivors of war crimes of sexual violence would be of significant value.

1.1 WAR IN BOSNIA AND HERZEGOVINA

Following the declaration of independence of Slovenia and Croatia from the Socialist Federal Republic of Yugoslavia (SFRY) in June 1991, the then Republic of Bosnia-Herzegovina (R BiH) declared sovereignty in October 1991. At the time, the population of R BiH was comprised of Bosnian Muslims (Bosniaks), Croats and Serbs and members of several ethnic

minorities. In February and March 1992 a referendum for independence was organized by the authorities of the R BiH. The referendum was largely boycotted by the Serbian population of R BiH. Some 92.7 per cent of those who voted, supported independence (from a turnout of 63 per cent). Following the referendum, tensions between the three main ethnic groups in R BiH escalated and war broke out on 6 April 1992 in Sarajevo.

Between April 1992 and September 1995 R BiH was the scene of grave violations of human rights constituting war crimes and crimes against humanity, including large number of killings, rapes and forced displacements. Amnesty International documented human rights violations which occurred during the war in numerous reports.⁸ It is estimated that around 100,000 people were killed; some 2 million became refugees and internally displaced persons (IDPs) and approximately 12,500 individuals are still missing.⁹ Both the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Court of Justice (ICJ) have ruled that genocide against Bosnian Muslims was committed in July 1995 in Srebrenica where more than 7,000 men and boys were killed.¹⁰

The use of rape and other forms of sexual violence during the war was widespread.¹¹ Rape was committed on a large scale by all parties to the conflict, although according to information available, the majority of victims were Bosnian Muslims.¹²

Evidence collected by the ICTY suggests that in some cases rape was organized in a systematic way, where women were deprived of their liberty in camps or in other locations, specifically for the purpose of sexual exploitation. In other cases acts of rape took place during military attacks on the civilian population, with the purpose of forcible displacement of civilians.¹³ The perpetrators of rape were members of organized armies, police forces and paramilitary groups. Amnesty International is also aware of several cases of rape allegedly committed by international peacekeepers. To date today none of the peace-keepers allegedly responsible for crimes of sexual violence has been brought to justice.

The armed conflict was concluded in November 1995 with signing of the Dayton Peace Agreement.

There are no reliable statistics on the number of women and men who were raped or were subjected to other forms of sexual violence. Early estimates by the BiH government suggested the number of 50,000 victims although this estimate was questioned as unreliable and politicized.¹⁴ The Parliamentary Assembly of the Council of Europe estimated that 20,000 women were subjected to rape and other forms of sexual violence.¹⁵

The real number of those who were raped during the 1992-1995 armed conflict will probably never be established. Even in peacetime rape is one of the most underreported crimes.¹⁶ According to experts, only 7-10 per cent of rape survivors before the war in the former Yugoslavia reported the crime.¹⁷

During the war few women were able to report the crimes committed against them, even if they wanted to, since public institutions, such as police and judiciary, had collapsed. In addition in many cases, members of the local police forces themselves were involved in rape. After the war, many survivors did not report the crime, because the police forces in communities where they lived were composed of persons who had been involved in war

crimes. Others feared that if they reported the crime, their identity could be disclosed which would expose them to stigmatization. Many of the survivors were too traumatized to acknowledge to their families what had happened to them during the war. The lack of psychological and social support available to them made it even harder for them to report the crime.

Amnesty International has not made its own estimate of the number of women and men raped during the war and is unable to verify any of the estimates produced by others. However, it considers that the evidence collected to date by the ICTY and domestic courts and information reported by national and international NGOs constitute strong evidence that the incidence of rape during the armed conflict was widespread and the number of those raped amounted to at least several thousand.

1.2 DAYTON PEACE AGREEMENT AND THE STRUCTURE OF THE COUNTRY

The General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Peace Agreement, DPA) of November 1995 which concluded the armed conflict in BiH created a complex power sharing structure¹⁸ Based on the DPA, Bosnia and Herzegovina consists of two semi-autonomous entities, the Federation of Bosnia and Herzegovina (FBiH) and Republika Srpska (RS). A special status was granted to the Brčko District in Northern Bosnia.

All three "constitutive nations" (Bosnian Muslim, Croats and Serbs) are represented in all public institutions of both entities and the Brčko District, in proportion to the ethnic composition of the population recorded in the 1991 census. The DPA also created the Office of the High Representative (OHR) who represents the international community in BiH. The OHR is charged with monitoring of the implementation of the DPA and since 1997 has had executive powers, including the power to dismiss BiH officials and enact laws.

Both entities within BiH have their own parliaments, governments and judiciaries. The Brčko District is also in charge of its own internal affairs, including the justice system.¹⁹ The FBiH is further decentralized into cantons all of which organize their judiciaries independently. The justice system of RS is centralized.

As a result of the complex and decentralized administrative organization, prosecutions for war crimes may take place in one of the 10 cantonal courts in the FBiH, or in one of five district courts in RS and in the Basic Court of the Brčko District. Since March 2005, following the establishment of the War Crimes Chamber (WCC) at the State Court of Bosnia and Herzegovina, prosecutions may also take place at the state level. This results in the existence of 13 jurisdictions in BiH responsible for prosecution of war crimes, with the State Court playing the central role.²⁰

According to the existing legal framework in BiH, psychological, economic and social support for survivors of rape and other forms of sexual violence should be provided by social welfare institutions. However, in BiH there is no central government body responsible for the social welfare system. This responsibility is discharged at the entity level, including through the introduction and implementation of legislation, the allocation of resources and the delivery of services. In RS the social welfare system is organized at the entity level, by the government of the RS, and delivered through municipal departments of social welfare which provide services directly to citizens. The FBiH the system is decentralized. The federal authorities are

responsible for the introduction of legislation and the allocation of resources to cantonal authorities, which then provide services directly to citizens. Each of 10 cantons of the FBiH organizes social care services in its own way, and the level and type of social support varies between different cantons.

As highlighted above, Amnesty International is concerned that the complex structures of the judicial and social welfare systems have resulted in a failure to provide all victims with equal access to justice and reparation.

2. RAPE AS A CRIME UNDER INTERNATIONAL LAW

Gender-based violations of human rights, including rape and other forms of sexual violence, have occurred throughout the history of armed conflicts and have been recognized as crimes under international customary law for several centuries.²¹ Nevertheless, with some exceptions, these crimes have in the main been dismissed as a normal part of conflict rather than addressed as the serious crimes that they are. Despite their prohibition under international and national laws, very few of such crimes have been investigated and prosecuted; and few of those responsible for committing rape and other forms of sexual violence in the context of armed conflict have been brought to justice.²²

In 1992 women's organizations in BiH and Croatia reported the occurrence of rape in Bosnia and Herzegovina on a massive scale. Following such reports human rights organizations, women's organizations and other civil society actors worldwide campaigned for the establishment of an international tribunal which would prosecute all allegations of rape and other war crimes which took place in the context of the conflicts in the former Yugoslavia. They have also campaigned for recognition of rape as a separate crime under international law.²³

The 1993 UN World Conference on Human Rights in Vienna provided a forum to draw attention to war crimes in the former Yugoslavia, in particular crimes committed against girls and women. After campaigning by women's organizations, the Vienna Declaration and Programme of Action, adopted on 25 June by 171 states at the World Conference, recognized that "violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law. All violations of this kind, including in particular murder, systematic rape, sexual slavery, and forced pregnancy, require a particularly effective response."²⁴

International humanitarian law, a set of rules which seek to limit the effects of armed conflict, provides for the protection of women and the prohibition, investigation and prosecution of rape.

While Common Article 3 of the Geneva Conventions does not specifically mention rape or other forms of sexual violence, it does prohibit "violence to life and persons", including torture and other cruel treatment, and "outrages upon personal dignity." Articles 12 of both the First and the Second Geneva Conventions refer to rape obliquely and using rather arcane language in requiring that "*women shall be treated with all consideration due to their sex*", while the explicit requirement to protect women against rape in the context of armed conflict or occupation is set out in Article 27 of the Fourth Geneva Convention which states that "*women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.*" Further Article 76 of Additional Protocol I, relating to armed conflicts between states, also affords women protection from

rape; while Article 4(2)(e) of Additional Protocol II does not specifically mention women it prohibits rape, enforced prostitution and any form of indecent assault, as well as other outrages upon personal dignity in internal armed conflicts. However, rape and other forms of sexual violence have not been defined as separate crimes by the Geneva Conventions.

2.1 DEFINITIONS OF CRIMES OF SEXUAL VIOLENCE

The definition of rape and other crimes of sexual violence in international law have been developed only recently, including in the jurisprudence of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) and in the Statute of the International Criminal Court (ICC). Rape is the only crime of sexual violence recognized explicitly by the Statute of the ICTY as a crime against humanity. The Statute of the ICTR, recognizes rape as a crime against humanity and a war crime under Article 3 common to all four Geneva Conventions as well as Additional Protocol II.²⁵

However, the jurisprudence of both Tribunals has established that, depending on the circumstances, rape and other forms of sexual violence may be considered as war crimes, crimes against humanity or genocide.²⁶

The *Akayesu* case prosecuted by the ICTR was the first case in which an attempt was made by an international tribunal to define these crimes. In this case rape and other forms of sexual violence were prosecuted as genocide. The trial panel found that those crimes “constitute genocide in the same way as any other act as long as they were committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such.”²⁷ While elaborating on the definition of rape the ICTR noted that “the central elements of the crime of rape cannot be captured in a mechanical description of objects and body parts.”²⁸ Rather than defining rape only in narrow, mechanical terms, the ICTR instead emphasized the nature of the situation in which rape occurs during armed conflicts. The understanding of the Tribunal was that rape was a specific crime included in a broader concept of sexual violence which was defined as “any act of a sexual nature which is committed on a person under circumstances which are coercive. Sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact.”²⁹

The “coercive circumstances” reflect the evidence in this case that, due to the aggressive nature of the situation and the presence of armed men, the victims were not able to make informed, free and voluntary choice about whether or not to engage in sexual activity. The ICTY also attempted to define rape in several cases, including *Delalić*,³⁰ *Furundžija*³¹ and *Kunarac*.³² While doing so it drew on the definition developed by the ICTR in the *Akayesu* case.

In the *Kunarac* case, where rape was prosecuted as a crime against humanity, it was defined as “the sexual penetration, however slight: (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (b) of the mouth of the victim by the penis of the perpetrator; where such sexual penetration occurs without the consent of the victim.”³³

The Trial Chamber identified elements of consent which had to be given “voluntarily, as a result of the victim’s free will, assessed in the context of the surrounding circumstances.”³⁴

The defendants challenged the definition developed by the Trial Chamber claiming that the existence of a victim's genuine or continuous resistance was an essential element to prove lack of consent. In response, the Appeals Chamber concluded that "Force or threat of force provides clear evidence of non-consent, but force is not an element per se of rape. In particular, the Trial Chamber wished to explain that there are "factors [other than force] which would render an act of sexual penetration non-consensual or non-voluntary on the part of the victim". A narrow focus on force or threat of force could permit perpetrators to evade liability for sexual activity to which the other party had not consented by taking advantage of coercive circumstances without relying on physical force.³⁵

The Appeals Chamber concluded that the coercive circumstances present in the case made it impossible for the victims to make a free choice, and express their valid consent.

2.2 DEFINITIONS OF CONSENT

Discussions of the definition of rape have also been taking place in other international forums. The UN Special Rapporteur on Contemporary Forms of Slavery, who was mandated to submit a report on systematic rape, sexual slavery and slavery-like practices during armed conflicts, defined rape as: "*Insertion, under conditions of force, coercion or duress, of any object, including but not limited to a penis, into a victim's vagina or anus; or the insertion, under conditions of force, coercion or duress, of a penis into the mouth of the victim.*"³⁶

"I lived in Srebrenica, the zone protected by international forces. The world knows about Srebrenica, but no one talks about what the international forces did to us. What they did to me. They are also war criminals!

I was queuing with other women, waiting for humanitarian aid, for some food. I was holding my baby in my arms. The Dutch soldier approached me and told me to follow him, so he would give me a packaged with food for the baby. I had not eaten for almost a week. I was exhausted. I followed him. I wanted to feed my baby. If someone came to you, took you by the hand and told you – please, follow me I have some food for your baby, would you go?

He asked me to wait in a room until he brought the package. I realized he had locked the room. I could not go out. I was so weak. I was crying, my child was crying too. I was locked for 24 hours. It was hot and we had nothing to drink. Then he came at night. Who talks about this?"

Esma, interviewed by Amnesty International in Bosnia in 2009

The Special Rapporteur stated that "consent is not an issue as a legal or factual matter when considering the command responsibility of superior officers who ordered or otherwise facilitated the commission of crimes such as rape in armed conflict situations."³⁷

Following on the jurisprudence of the ICTR and the ICTY and informed by opinions expressed by international scholars and NGOs, including Amnesty International, the International Criminal Court (ICC) included a definition of rape and other forms of sexual violence such as sexual slavery, enforced prostitution, forced pregnancy and enforced sterilization in its Elements of Crimes guidelines. According to the Elements of Crimes, rape and other forms of sexual violence may amount to crimes against humanity or war crimes.

Rape as a crime against humanity or war crime is defined as "penetration, however slight, of

any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.”³⁸

In order to meet elements of crime the act has to be “committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.”³⁹

The distinguishing element qualifying rape as a crime against humanity is the fact that it was “committed as part of a widespread or systematic attack directed against a civilian population” and with the knowledge of the perpetrator of this fact.⁴⁰ The qualification of rape as a war crime is due to its commission during an armed conflict and the awareness of the perpetrator of the existence of an armed conflict.⁴¹

2.3 NO AMNESTY

The UN Security Council in its Resolutions 1325/00 and 1820/08 stressed the need to exclude war crimes, crimes against humanity and genocide, including those related to sexual violence, from amnesty provisions. These resolutions also emphasize the responsibility of all states to prosecute those crimes and end impunity for them.⁴²

In its recent resolution on sexual violence against women in armed conflicts, the Parliamentary Assembly of the Council of Europe echoed the two UN Security Council Resolutions and called upon the member states of the Council of Europe to “*consider sanctioning countries which are unwilling to protect women from sexual violence in armed conflict or unwilling to prosecute the perpetrators.*”⁴³

3. THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

"[A]n international tribunal should be established to bring to justice the perpetrators of all war crimes and crimes against humanity, including rape. Those who committed rape, those who ordered it, or those in positions of authority who failed to prevent it should be brought to justice."⁴⁴

The idea for the International Criminal Tribunal for the former Yugoslavia (ICTY) was suggested in a report by Tadeusz Mazowiecki, the UN Special Rapporteur of the Commission on Human Rights, in February 1993. This report was followed by a detailed study by a team of experts which dealt with the widespread practice of rape during the war.⁴⁵

As a result of these reports as well as the pressure from the international women's movement, the UN Security Council, in its resolutions 808/1993 and 827/1993, decided to establish the ICTY.⁴⁶ The aim of the ICTY was to contribute to the restoration and maintenance of international peace and security through the administration of justice.⁴⁷

On 7 November 1994 the ICTY issued its first indictment against Dragan Nikolić, a commander of Sušica camp in BiH, for crimes committed against non-Serbs in 1992. The first trial began on 7 May 1996 against Duško Tadić, a Bosnian Serb accused of crimes committed during 1992 in the Omarska camp, where thousands of Bosnian Muslim and Croat civilians were detained.

Many prominent women lawyers have contributed to the work of the ICTY. The Tribunal has had women judges (i.e. Navanethem Pillay, the current UN High Commissioner for Human Rights), prosecutors (i.e. Carla del Ponte and Louise Arbour the former UN High Commissioner of Human Rights) and members of staff. The Rules of Procedure and Evidence explicitly recognized that "due consideration shall be given, in the appointment of staff, to the employment of qualified women" in the Victims and Witnesses section of the ICTY.⁴⁸ The first ICTY Chief Prosecutor, Richard Goldstone, created a special unit to deal with gender-related prosecutions.⁴⁹

As of July 2009 the ICTY had concluded proceedings in 86 cases against 120 accused. Eighteen cases against 41 defendants were ongoing at the time of writing. Two indictees, Ratko Mladić and Goran Hadžić, remained at large.⁵⁰

In 2003, the Security Council adopted Resolution 1503 calling on the ICTY to "take all possible measures to [...] complete all trial activities at first instance by the end of 2008,

and to complete all work in 2010." Since then the implementation of the Completion Strategy has been regularly reviewed and the Tribunal is now expected to finish all pending trials, including appeals, by 2012. In its efforts to implement the completion strategy, the ICTY has focussed on prosecuting cases against those in senior leadership positions. Thirteen other cases have been referred or transferred to the national courts of BiH, Croatia and Serbia.

3.1 PROSECUTION OF CRIMES OF SEXUAL VIOLENCE

Since its creation the ICTY has prosecuted and concluded 18 cases which included charges of rape and other forms of sexual violence related to the war in BiH.⁵¹ Those charges are also included in some of the ongoing cases.

Through its jurisprudence in these and other cases, the ICTY has contributed to the development of international criminal law related to rape and other forms of sexual violence. In judgments in cases such as *Delalić et al.*,⁵² *Furundzija*⁵³ and *Kunarac et al.*⁵⁴, the ICTY has defined rape as a crime under international law and established that, depending on the circumstances in which it took place, it can be prosecuted as war crime, a crime against humanity or genocide. These judgments of the Tribunal have also elaborated on the issues of freely-given consent expressing sexual autonomy and "coercive circumstances", further defining those elements of the crimes.⁵⁵

Despite these achievements, Amnesty International considers that there have been also some failures in the way the ICTY has addressed war crimes of sexual violence. In the view of Amnesty International and others, some of them result from the ICTY Completion Strategy and others derive from the lack of pre-existing jurisprudence and practice in relation to prosecution of this category of crimes under international law.⁵⁶

Amnesty International is concerned that since the announcement of the Completion Strategy in 2003, in some cases, certain charges were reduced in the indictments in order to expedite the prosecution of cases. For instance, charges related to crimes of sexual violence were excluded from some indictments. Exclusion of those charges from the indictments resulted in the lack of access to justice for the survivors of these crimes and in impunity for those responsible for their perpetration.

For example, in the case of Milan and Sredoje Lukić, indicted for war crimes committed in the Višegrad area, allegations relating to their involvement in rape and sexual slavery at the Vilina Vlas hotel were not included in the indictment.⁵⁷ However, credible evidence of the abduction of young women who were subsequently held and subjected to rape and other crimes of sexual violence at the Vilina Vlas hotel near Višegrad has been gathered by the Tribunal and the State Court of BiH which points to the alleged responsibility of the Lukić cousins for rape and other crimes of sexual violence. A number of non-governmental organizations have also documented testimonies of victims who allege that they were raped by members of paramilitary groups under Milan Lukić's command. Amnesty International in 1993 documented two cases in which girls reported that they had been raped in Vilina Vlas hotel, allegedly by members of the White Eagles, which was under Milan Lukić's command.

The prosecutor's office, under Carla Del Ponte's leadership, expressed interest in amending the initial indictment in this case by including charges relating to sexual violence and was

given the deadline of until November 2007 to present a new indictment. However, the new indictment was not submitted by the deadline, ostensibly due to the need to accelerate the prosecution in line with the Completion Strategy.⁵⁸ In June 2008, after the departure of Carla del Ponte, the new Chief Prosecutor, Serge Brammertz, requested the Tribunal's permission to amend the indictment, although the time frame given for doing so had long past. The request was rejected by the Trial Chamber in July 2008.⁵⁹ This caused disappointment on the part of the associations of survivors who felt that their testimonies had been ignored and that their suffering was not being acknowledged.⁶⁰

Amnesty International shares the deep dissatisfaction expressed by associations of survivors with the exclusion of charges related to crimes of sexual violence in the Lukić and Lukić indictment.⁶¹ The organization also shares concerns raised at the fact that charges related to rape in the initial indictment against Radovan Karadžić were not included in a comprehensive manner.⁶²

Amnesty International has on numerous occasions expressed its concerns regarding the Completion Strategy of the ICTY and remains concerned that the pressure being placed by the UN Security Council on the ICTY to complete its cases in an unreasonable timeframe may have resulted in the omission of charges of sexual violence in recent cases.⁶³

Amnesty International observes that after the completion of the case against Milan and Sredoje Lukić at the ICTY charges could still be brought for war crimes of sexual violence by the domestic judiciary in Bosnia and Herzegovina. The organization considers that the evidence which has already been gathered during the investigation by the ICTY should be transferred to the State Prosecutor of Bosnia and Herzegovina.

Amnesty International calls on the State Prosecutor of Bosnia and Herzegovina to open an investigation into the substantial number of allegations against Milan and Sredoje Lukić related to war crimes and crimes against humanity of sexual violence committed in the Višegrad area.

3.2 LACK OF SUPPORT FOR SURVIVORS

"People say we should let it out, that we should express our pain. It is not that easy. It is impossible to forget. I have been in therapy for three years now. If it wasn't for the psychological support and the medicine, I would not be alive. Before the therapy I felt as if I was dead. I was hiding the shame and humiliation. I kept all these bad feelings inside, but they would not disappear.

I can't sleep without my pills. I still get upset easily when people mention the war. An image, a memory, a TV spot can be a spark. I can't stand it. I can't deal with this on my own. I have to run away from children not to shout at them. I don't want my problems to affect them. I need help!" – Selma, interviewed in the Federation of BiH in March 2009.

Unlike the permanent International Criminal Court (ICC) established in 2002, the ICTY's Statute and Rules provide little, beyond prosecuting suspects, to implement the rights of victims and survivors of crimes under its jurisdiction to a remedy, the right to know the truth about the crimes and the right to full and effective reparations. Survivors can only participate

in ICTY trials taking place in The Hague if they are selected to be witnesses, whereas, before the ICC, survivors can be represented throughout the trial and, where their personal interests are affected, they may present their views and concerns if it is considered appropriate by the Court and does not prejudice the rights of the accused. Moreover, whereas the ICC Statute provides in Article 75 that the Court may order reparation for victims against a convicted person, the ICTY Statute does not provide for Court to make reparation orders for victims and survivors. This issue was reviewed by the judges in 2000 who concluded that "it is neither advisable or appropriate that the Tribunal be possessed of such a power, in particular, for the reason that it would result in a significant increase in the workload of the Chambers and would further increase the length and complexity of trials."⁶⁴

The limited role for survivors before the ICTY as witnesses only coupled with the fact that the trials are taking place almost two thousand kilometres away has meant that victims have struggled to engage with the ICTY's work. Those survivors who have been witnesses in trials and the NGOs supporting them, with whom Amnesty International talked, have expressed a number of concerns about their experiences.

When the ICTY started its work there had been no preexisting model for witness and victim support in cases of war crimes of sexual violence before international tribunals. The Tribunal's Rules contain protections for victims of sexual violence who serve as witnesses, including prohibiting evidence of previous and subsequent sexual activity and rules on evidence of consent, which aim to avoid the disturbing practice in many national justice systems where the survivor's actions are put on trial rather than the accused. However, beyond these specific safeguards, in practice, serious concerns exist about the level of support offered to survivors who serve as witnesses.

The responsibility for assessment and provision of support for witnesses, including counseling, was entrusted to the Victims and Witness Section of the ICTY– the first such unit of its kind in international justice - which was created by the ICTY Registrar.⁶⁵ However, the Statute of the Tribunal as well as the Rules of Evidence and Procedure do not define specific support measures available to witnesses. Therefore the ICTY has been developing its policy on witness and victim support as the cases have progressed.

One of the biggest concerns survivors and NGOs have identified with the support system is that the ICTY has failed to address the long term psychological, social and economic needs of the survivors of war crimes of sexual violence.⁶⁶ Many survivors told Amnesty International that they agreed to be witnesses as a result of their determination to see those responsible for the crimes against them brought to justice, risking their personal safety and exposing themselves to re-traumatization, only to discover that, upon the conclusion of the trial, all support to them ended despite their continued need for support and protection. In the absence of support provided by the ICTY and the BiH authorities alike, the gap has been filled by the local NGOs.

In the eyes of survivors of sexual violence who have participated in cases as witnesses, and of the NGOs supporting them, the ICTY has failed to fully address the needs of the survivors and has shown little understanding of their personal situations. For example an employee of the NGO Medica Zenica, who has been providing psychological support to victims of sexual violence who have agreed to serve as witnesses and preparing them to testify in the ICTY, told

Amnesty International that at the beginning the Tribunal had failed to provide adequate financial support for witnesses. As a result, some of the witnesses were not eager to testify in the ICTY as they were ashamed of their poverty: many of them could not afford the appropriate clothes, toiletries or luggage which they felt they needed in order to travel to the Netherlands to give their testimonies.⁶⁷

The director of Vive Žene, an NGO which has worked since 1994 supporting women survivors of sexual violence, said she was surprised to discover that, as a court expert, she was placed in a better standard of accommodation in The Hague than were the Tribunal witnesses whom she was supporting.⁶⁸

In addition, as noted above, the provision of compensation to victims was not included in the mandate establishing the Tribunal. The only provision related to compensation is Rule 106 of the Rules of Evidence and Procedure, which allows for the use of the ICTY judgments in compensation proceedings brought before domestic courts.⁶⁹

Amnesty International has no position on sentencing except that the penalties imposed are in accordance with those set out in law, commensurate with the gravity of the crime and do not allow for the use of the death penalty. However, in the eyes of many victims and witnesses the legacy of the ICTY is overshadowed by sentences which they considered to be low in many cases. Some of the women who testified at the ICTY told Amnesty International that they felt that their effort and the impact on them of re-opening their trauma during the process of giving testimonies was too great and the outcome of the trial too disappointing. Some said that they would have not testified, if had they known of the outcome of the trials.⁷⁰ For example many survivors considered the sentences imposed in the *Kunarac and others* case to be too lenient. Upon appeal Dragoljub Kunarac was sentenced to 28 years' imprisonment and Radomir Kovač and Zoran Vuković to 20 and 12 years' respectively. In an interview with *the Guardian* newspaper, Nezira Zolota, of the Association of Former Concentration Camp Inmates, expressed her disappointment saying: "we are shocked with the verdict. Justice has not been done, as the three received a minimum punishment for what they have done."⁷¹ In the *Kvočka and others* case concerning war crimes, including rape, committed at Omarska camp, survivors expressed anger at the fact that three of the perpetrators were sentenced to between five and seven years' imprisonment.⁷²

Dragoljub Kunarac, Radomir Kovač and Zoran Vuković were soldiers of the Bosnian Serb Army. They were convicted on charges related to rape and other war crimes of sexual violence, including sexual enslavement, committed in Foča between April 1992 and February 1993. They were adjudged as responsible for, among other things, detaining Bosnian Muslim women and girls in detention centres, as well as enslaving them in houses and private apartments for the purpose of sexual exploitation. Some of the victims were only 14 years old at the time of the crime. One of the rape camps was so called "Karaman's house"; girls held there were continually sexually and physically abused.

The accused treated some of their victims as their 'property'. For instance Radomir Kovač enslaved four girls in his apartment and invited other soldiers to come and rape them. He also sold three of the girls to other soldiers for between DM 200 and DM 500 each.

Many of the women were gang-raped, as well as being subjected to other forms of torture and were made to serve the accused and conduct house duties.

The three accused men were convicted of having committed crimes against humanity and war crimes and sentenced in June 2002: Dragoljub Kunarac was sentenced to 28 years' imprisonment; Radomir Kovač received a sentence of 20 years' imprisonment and Zoran Vuković was sentenced to 12 years' imprisonment.

In the opinion of some survivors and NGOs in BiH, sentences imposed by the ICTY in war crimes cases on those accused who pled guilty were inconsistent with the notion of punishment, as they were too lenient to have a preventive character. Rather they considered that the sentences more resembled an amnesty, as individuals who pled guilty often did not show genuine remorse.⁷³

3.3 END OF RESPONSIBILITY

Since its establishment, the ICTY was not intended to be the sole institution responsible for prosecution of war crimes committed during the wars in the former Yugoslavia. The Statute of the ICTY explicitly states that the Tribunal and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991.⁷⁴ By the time the ICTY completes the cases pending before it, including against the two accused still at large, it will have tried 163 accused in 104 cases.

A limited number of cases related to war crimes committed during the war in BiH have been prosecuted in third countries, where the accused immigrated during or after the war.⁷⁵

Therefore the main responsibility for bringing justice to those responsible war-time human rights abuses, including rape and other crimes of sexual violence lies within the judicial system of BiH.

4. PROSECUTIONS IN BOSNIA AND HERZEGOVINA

"I do not know if it is possible to punish this crime. If justice exists at all?! Dear God I hope it does! Maybe somewhere but not here in Bosnia! Not here! Here there is no justice at all!"- Bakira, interviewed by Amnesty International in FBiH in March 2009.

Amnesty International is concerned that over the past 13 years little progress has been made in domestic courts in BiH in the prosecution of those responsible for war crimes which took place during the armed conflict, including cases of rape and other forms of sexual violence. Despite some recent efforts, impunity still prevails and the majority of those responsible have not been brought to justice.

As a result of the administrative organization of the country, war crimes prosecutions can take place before 10 cantonal courts in the FBiH, five district courts in RS and the Basic Court of the Brčko District. In March 2005 when the WCC was created at the State Court of Bosnia and Herzegovina prosecutions started also at the state level. This results in the existence of 13 jurisdictions in BiH responsible for prosecution of war crimes with the State Court playing the central role.

Amnesty International notes that there are significant differences between those jurisdictions in legislation relating to war crimes, which in many cases result in a different legal definition of the same crime, including rape, and inconsistency in penalties imposed. The organization is concerned that a lack of consistent witness support and protection may result in discrimination against women seeking access to justice.

The organization notes that, across BiH, prosecutions take place in a justice system which has insufficient resources and a huge backlog of unresolved cases, amounting to almost 2 million.⁷⁶ Of this backlog 160 000 are unresolved criminal cases; among them it has been estimated that between 6,000 to 16,000 are unresolved war crimes cases, at different stages of prosecution, registered in all 13 jurisdictions of the country.⁷⁷ Statistics on how many of the unresolved cases are related to rape and other war crimes of sexual violence are not available and have never been collected by the authorities.⁷⁸

4.1 PROSECUTION OF WAR CRIMES AT THE WAR CRIMES CHAMBER

The WCC was established at the State Court in March 2005, under the Law on the Court of Bosnia and Herzegovina, with the aim of increasing the capacity of the judiciary in BiH to investigate and prosecute cases of war crimes.⁷⁹ The creation of the WCC at that time was especially important in view of the implementation of the ICTY Completion Strategy, the initial intent of which was to complete the work of the ICTY by 2010.

The Special Department for War Crimes of the Prosecutor's Office was established by the Law on the Prosecutor's Office of Bosnia and Herzegovina.⁸⁰

Since its creation, the WCC has included both domestic and international judges and prosecutors. The establishment of the WCC was followed by a detailed plan by which it would gradually transform from a so-called 'hybrid' institution, with both international and domestic staff, into a fully national court (without international judges and prosecutors) by the end of 2009. Recent discussions however indicate that this period might be extended, with international judges sitting only on appellate panels and with a limited involvement of international prosecutors.⁸¹

Responsibility for the appointment of judges and prosecutors in the State Court lies with the High Judicial and Prosecutorial Council of Bosnia and Herzegovina. At the WCC the trial panels and the appellate panel alike are composed of three judges; two of the three judges are BiH nationals and one is from the international community. The pool of national judges appointed to the WCC reflects the ethnic composition of the country as it appeared in the 1991 census. In April 2009 there were 17 Bosniak, 15 Serb and seven Croat judges serving in the State Court, as well as two judges representing "other" ethnic groups.⁸² The State Court has nine non-national judges.⁸³

In the Special Department for War Crimes of the State Prosecutor's Office there are 19 prosecutors employed out of which five are 'international', including the Head of the Department.

4.1.1 JURISDICTION OF THE WAR CRIMES CHAMBER

The WCC adjudicates on cases of war crimes, crimes against humanity and genocide, set out in the BiH Criminal Code which came into force in 2003. In the adjudication of these cases, the WCC has reference to the jurisprudence of the ICTY and other international courts dealing with violations of international criminal and humanitarian law.

As of July 2009 the WCC had completed 33 cases with final verdicts, 12 of which included charges related to war crimes of sexual violence. There have been 57 war crimes cases pending. Fifteen of those cases included charges related to war crimes of sexual violence.⁸⁴

Cases for prosecution may be brought to the WCC from the following sources:

1. From the ICTY

Some cases are transferred to the BiH judiciary under *Rule 11 bis* of the ICTY; in these cases the indictment was issued by the ICTY. Other cases transferred to the domestic courts from the ICTY include cases in which investigations have begun, but have not been completed, by the ICTY Prosecutor, and further investigation would be required by the BiH State Prosecutor.

The indictment against **Radovan Stanković** was transferred to the WCC from the ICTY. Radovan Stanković was arrested in July 2002 and transferred to the custody of the ICTY. The ICTY transferred the case to the Court of BiH on 1 September 2005 and the accused was transferred from the custody of The Hague to that of BiH later that month.

According to the judgment, Radovan Stanković, who was a member of the Bosnian Serb Army during the war was found responsible along with other persons, for setting up an unlawful detention centre for women in Foča in August 1992. Known as 'Karamanova kuća', it was also referred to by Bosnian Serb soldiers as the "Brothel". At least nine women – most of them under the age of consent - were held there. One of them was

only 12 years old at the time. Radovan Stanković claimed one of the detainees as his 'property', forcing her to have sexual intercourse with him every night over a period of several months. This included vaginal, oral and anal sex, often in presence of others. According to the judgment, on one occasion, he raped the girl's sister (who was under the age of 18) in her presence. He also forced the girl to drink alcohol.

As it was established in the judgment, Radovan Stanković also incited other soldiers to rape and abuse detainees and brought some persons to the detention centre assigning them women to be raped. During their detention in „Karamanova kuća“ the women were forced to cook, clean, wash uniforms and bathe the soldiers. They were also beaten and called derogatory names.

On 14 November 2006, Radovan Stanković was convicted for crimes against humanity, including rape, and sentenced to 16 years' imprisonment by a trial panel. On appeal the verdict was confirmed but the sentence was increased to 20 years' imprisonment.

2. From the entity courts

Cases had been initiated in the entities before March 2003, when the new BiH Criminal Code entered into force. These cases are reviewed by the WCC and a decision is made on whether the WCC should conduct the prosecution or if the case may be transferred back to the entity courts.

The case of Boban Šimšić was initiated by the Cantonal Court in Goražde (FBiH) in April 2003. In January 2005 the case was transferred to the District Court in Istočno Sarajevo (RS) when the accused turned himself in to the competent Prosecutor's Office. On 13 May 2005 the case was taken over by the WCC.

According to the indictment:

Boban Šimšić was a guard at the Elementary School Hasan Veletovac in Višegrad in June 1992, where the members of the Bosnian Serb Army detained Bosniaks from the area. Some detainees initially thought **Boban Šimšić** would save them, as they were his neighbours and knew him from their school days.

According to the verdict:

He was found guilty of singling out girls and young women who were detained in the school and participating many times in raping them.

After being singled out by **Boban Šimšić**, the women and girls were taken to different locations by other members of the Bosnian Serb Army, who raped them. One woman was taken away despite the fact that she had a nine-month-old baby with her. The judgment concluded that Boban Šimšić raped her and ordered her not to tell anybody about what had happened, threatening to kill both her and her baby. Women detained in the school were subjected to extreme physical and verbal abuse while being raped. The perpetrators often laughed at the women, hit them and beat them.

On 11 July 2006, Boban Šimšić was convicted of having committed crimes against humanity, including rape, and was sentenced to five years' imprisonment by a trial panel. On appeal, the conviction was upheld but the sentence extended to 14 years' imprisonment.

3. From the State Prosecutor's Office

These are cases in which the State Prosecutor's office began investigations after March 2003, when the BiH Criminal Code entered into force and when the entities removed provisions related to war crimes, crimes against humanity and genocide from their Criminal Codes.

According to the indictment:

During the war **Zrinko Pinčić** was a member of the HVO (Croat Defense Council). Between November 1992 and March 1993 he visited a house in Donje Selo, where Serb civilians were unlawfully detained, and repeatedly raped one woman. Several times during that period he took the woman from a room where other civilians were detained, and forced her to have sexual intercourse with him. He held a rifle by the bed and threatened her that he would bring another 15 soldiers to rape her and other detainees, if she refused him.

On **28 November 2008** a trial panel convicted **Zrinko Pinčić** of war crimes against civilians, including rape and sentenced him to nine years' imprisonment.

4.1.2 DEFINITION OF WAR CRIMES OF SEXUAL VIOLENCE INCONSISTENT WITH INTERNATIONAL LAW
War crimes, crimes against humanity and genocide are defined in chapter XVII of the BiH Criminal Code under the heading *Crimes Against Humanity and Values Protected by International Law*. Crimes of sexual violence as crimes against humanity are defined by the Criminal Code as: "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), sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation or any other form of sexual violence of comparable gravity."⁸⁵

According to the Criminal Code, to constitute crimes against humanity, such crimes have to be part of "a widespread or systematic attack directed against any civilian population"⁸⁶

Rape and other forms of sexual violence as war crimes against the civilian population are defined in a similar way in Article 173 of the BiH Criminal Code, except that such acts do not have to be a part of a widespread or systematic attack.

Amnesty International has noted with concern that the definition of sexual violence in the BiH Criminal Code is not consistent with the definition of such crimes in international standards and jurisprudence of international courts, as set out in Chapter 2 of this report.

As established in a number of judgments of the ICTY, and particularly in the Appeals Chamber judgment in the *Kunarac* case, the use of force or the threat of force should not be the only means available to establish that the rape or other sexual act was not consensual.⁸⁷ The jurisprudence of the international tribunals favours the notion of "coercive circumstances" as well as direct force or the threat of force as an element of rape.⁸⁸ This approach was also taken by the Trial Chamber of the ICTR in the *Akayesu* Trial Chamber; the judgment states that: "coercive circumstances need not be evidenced by a show of physical force. Threats, intimidation, extortion and other forms of duress which prey on fear or desperation may constitute coercion, and coercion may be inherent in certain circumstances, such as armed conflict."⁸⁹

The relevance of this reasoning to the context of the war in Bosnia and Herzegovina was confirmed by the Trial Chamber of the ICTY in its judgment in the *Delalić* case.⁹⁰

Amnesty International recommends that the BiH Criminal Code be amended, in a manner which is consistent with the jurisprudence of the international tribunals in cases of war crimes and crimes against humanity and genocide involving sexual violence. Until such time as the law is amended, the organization recommends that judges adjudicating in war crimes cases at the WCC and in the entity courts take into consideration the relevant jurisprudence of the international tribunals and international standards when interpreting the provisions of the BiH Criminal Code.

4.1.3 PROSECUTING CASES OF WAR CRIMES OF SEXUAL VIOLENCE

As of July 2009 the State Court of Bosnia and Herzegovina had delivered final judgments in 12 cases against 15 accused related to war crimes of sexual violence.⁹¹ Twelve of those accused have been convicted and three were acquitted.⁹² One trial ended upon a plea agreement between the accused and the prosecutor's office, which was approved by the Court.⁹³ The sentences imposed range from six to 34 years' imprisonment.⁹⁴

The majority of cases related to war crimes of sexual violence in which the WCC has delivered a final judgment were either cases which had been directly transferred to the BiH judiciary from the ICTY under *Rule 11bis*⁹⁵ or cases which relied on the investigative work which had already been done by the ICTY. These cases related, in the main, to violations of international humanitarian law by members of the Bosnian Serb Army in Eastern Bosnia, including Foča and Višegrad, as well as detention camps of Keraterm and Omarska.⁹⁶

The case against **Željko Mejakić, Momčilo Gruban** and **Duško Knezević** was transferred to the State Court from the ICTY; the State Court confirmed the indictment in July 2006. The accused were indicted for mistreatment and persecution of non-Serb civilians who were systematically unlawfully arrested and taken to detention facilities at Omarska, Keraterm and Trnopolje camps.

Željko Mejakić was the Chief of Security and *de facto* commander of the Omarska Camp, who supervised and was responsible for the three shifts of guards and had effective control over the work and conduct of all camp guards and other persons working in the camp.

Rape and other forms of sexual abuse of detainees was committed in Omarska camp by persons over whom **Željko Mejakić** had effective control, including sexual abuse on numerous occasions by the camp guards.

Momčilo Gruban was a commander of one of the three guard shifts in the Omarska camp. Rape and other forms of sexual abuse of detainees were committed by persons outside of the shift that was under **Momčilo Gruban's** command but in circumstances of the system of ill-treatment and persecution at the camp in which he participated.

Duško Knezević had no official position in Omarska camp but entered the camp at will, where he participated in the killing and beating of the detainees. These actions contributed towards the functioning of the camp's system of ill-treating and persecuting the detainees through various forms of physical, mental and sexual violence. Rape and other forms of sexual abuse of the detainees were directly committed by persons other than **Duško Knezević** but in the circumstances of the described system of ill-treatment and persecution.

On 30 May 2008, the Court found **Željko Mejakić guilty of crimes against humanity** and sentenced him to 21 years' imprisonment. **Momčilo Gruban was found also guilty of crimes against humanity**; he was sentenced to 11 years of imprisonment. **Duško Knežević** who was found guilty of the same crime was sentenced to 31 years' imprisonment. Upon appeal the Court confirmed the sentences for Željko Mejakić and Duško Knežević while the sentence for Momčilo Gruban was decreased to seven years' imprisonment.

4.1.3.1 Jurisprudence of the WCC

Amnesty International considers that there have been some positive aspects in the way the WCC has dealt with cases related to rape and other forms of sexual violence committed in the context of the conflict. For example, in the *Janković* case, which was one of the first cases of this kind before the WCC, the chamber established, in line with the jurisprudence of the ICTY, that corroboration of witness testimony in cases related to sexual violence was not required.⁹⁷ This practice has been followed in other similar cases.

According to the judgment, **Gojko Janković**, during the war was a leader of a military unit within the Foča Brigade of the Bosnian Serb Army.

In July 1992, together with other soldiers from the unit, he separated several women and girls from a group of civilians in the area of Buk Bijela. The women and girls were first interrogated by Gojko Janković and another soldier. One of the women was taken away to another location where she was gang-raped by at least 10 soldiers.

According to the judgment between 13 July and 13 August 1992, **Gojko Janković** also raped and enabled other soldiers to rape a number of detained Bosnian Muslim women in the "Partizan" sports hall in Foča. Some of them were taken away to be raped in other locations. Many of the women detained in the sports hall were gang-raped repeatedly.

According to the judgment **Gojko Janković** together with **Dragoljub Kunarac** and other persons took three teenage girls from a house in Foča and brought them to a house in the village of Trnovača. One of the girls was kept in the house for a few days but two others were kept there for six months, and then moved to another apartment for another 10 months. During this period the girls were treated as slaves and as "objects and personal possessions". The men exercised full control over their lives.

As it was established in the judgment on other occasion **Gojko Janković** together with two other men, took two women and one girl from the 'Karamanova kuća' detention centre to an apartment in Foča, where they repeatedly raped them. One of them was only 12 years old at that time.

On 16 February 2007, the WCC found **Gojko Janković** guilty of crimes against humanity, including rape and sentenced him to 34 years' imprisonment.

On 19 November 2007 the Appellate Panel issued the final verdict in the case, partially upholding the defence appeal but the sentence remained unchanged.

The WCC has considered a victims' young age to be an aggravating circumstance in sentencing the crime of rape. In the *Samardžić* case, the trial judgment maintained that raping teenage girls increased the gravity of the crime. The appeals chamber judgment noted

that in such cases, the trauma is particularly serious and the consequences for the mental and physical health of the victims particularly far-reaching.⁹⁸ This could constitute a positive legal precedent in that the court clearly sought to take the specific circumstances and consequences of the abuse into account.

Sexual slavery is a specific crime that recognizes in some situations women are subjected to sexual violence in situations, including trafficking, where the perpetrator or perpetrators attach the right of ownership over them or deprive them of their liberty. In this report, Amnesty International documents many situations during the conflict where women were held against their will and clearly subjected to sexual slavery. Despite the widespread commission of this crime, sexual slavery is not defined as a separate crime in the BiH Criminal Code. However in the *Samardžić* case the WCC charged the accused with this crime. By doing so it explained the circumstances in which acts of sexual slavery occurred. The appeal judgment described those circumstances in the following way, referring to the testimony of one of the witnesses; “she, upon her transfer from the above-mentioned apartment to the ‘Karaman’s house’, was kept in sexual slavery, in other words forced, together with injured “L” and G.J, into doing the housework, and subjected to rape by Nikola Brčić and other soldiers. [...] through their stay there all three of them were subjected to rape by Nikola Brčić, in the first place. According to the witness, he made them drink with him, sing Chetnik songs, and do whatever he requested them to.”⁹⁹

The appellate panel judgment while elaborating on the issue of consent in relation to sexual slavery, stated that the “lack of resistance or obvious and constant disagreement throughout the sexual slavery cannot be interpreted as a sign of consent.”¹⁰⁰ In this way the WCC reaffirmed the principle of “coercive circumstances” related to war crimes of sexual violence which makes consideration of the issue of consent irrelevant, in conformity with other similar cases of sexual violence.¹⁰¹

4.1.4 INADEQUATE PROTECTION FOR WITNESSES

In its 2003 report on war crimes prosecutions in BiH, Amnesty International observed: “[r]eports of harassment and intimidation of trial witnesses have emerged during virtually all war crimes trials that have taken place to date, often resulting in the collapse of prosecution cases or the significant reduction of evidence as witnesses changed or revoked statements given earlier. While the adoption of witness protection legislation [...] goes some way towards resolving the problematic situation, much more needs to be done on the practical and legal level in order to ensure adequate protection of witnesses testifying in war crimes trials before all courts in the country.”¹⁰²

Six years later, Amnesty International considers that the issue of witness protection remains to be adequately addressed by the authorities. Amnesty International’s research indicates that the lack of adequate witness protection has had a tremendous impact on the willingness and ability of witnesses to testify. Many potential witnesses have experienced real or perceived threats to their safety.

Several reports on the situation in BiH have observed that the security situation has improved and that pressure on witnesses and their need for protection has decreased.¹⁰³ However, Amnesty International is of the view that in cases related to rape and other forms of sexual violence, the lack of adequate witness protection remains a significant barrier to access to

justice for survivors in BiH and is yet to be adequately addressed by the relevant authorities.

Amnesty International considers that witness protection must be provided at three different phases of prosecution: at the stage of pre-trial investigation; during the trial and after its completion.

Under the law in Bosnia and Herzegovina, the obligation to protect witnesses in the first and the last phase of proceedings before the State Court lies within the State Investigation and Protection Agency (SIPA) and its Witness Protection Unit.¹⁰⁴ The issue of witness protection in the courtroom at the State Court is regulated by the Law on Protection of Witnesses Under Threat and Vulnerable Witnesses, which was adopted in 2003.¹⁰⁵

According to the law, protective measures in the courtroom at the WCC may be ordered by a trial panel. They may include, among other things, voice or image distortion, giving testimony via video-link, using pseudonyms in order to protect the identity of witnesses, exclusion of the public from a part or the whole of a court session, closed trials, and exclusion of the presence of the defendant during testimony of a victim.

Recognizing the importance of witness protection, the State Court has established the Working Group on Witness Protection. This Working Group has developed a number of procedures and checklists aimed at helping judges to ensure more effective protection of witnesses.

Amnesty International considers that the use of protective measures must be carefully considered. They must address not only the safety and dignity of witnesses, but also must be undertaken in a manner which is consistent with respecting the right of the accused to a fair trial, in a manner consistent with international standards.

Amnesty International has noted some worrying examples of practice at the WCC which did not take appropriate account of the witnesses' needs, in its proceedings.

For example, victims and NGOs working on their behalf have raised concerns about the closing of trials in the cases of *Stanković* and *Samardžić* in which both of the accused were charged with different counts relating to sexual violence.¹⁰⁶ In both cases closed trials were ostensibly ordered in order to protect the identity of witnesses. However, an NGO representing victims observed that some of the witnesses had not asked for such measures and had told the court that they preferred to face the accused without any protection. It is also unclear why the court did not decide to use some other, less restrictive measures of protection like for example voice or image distortion.

It was observed that holding these trials with full public access could have had a positive effect on the public discourse about rape committed during the war. It would also have enabled some survivors of rape to have their suffering publicly expressed and acknowledged. One commentator noted "while witnesses, especially rape victims, are entitled to have their identities protected, a court needs to remember that it serves the people, not the other way around"¹⁰⁷

Amnesty International is also concerned about the reasoning behind the decisions to hold

closed sessions which at least in some cases were based on 'the need to protect morality'. For example in the *Šimšić* case the trial panel stated that in its decision to close a session it was "guided by reason of protection of morality in a democratic society, having in mind the traditional position of a woman in the Bosnia-Herzegovina milieu, even where some female witnesses expressed readiness to confront openly with the accused during their public confession."¹⁰⁸

Invoking the perceived "morality" of victims in discussions about rape has been widely criticised by scholars. It has been argued that such an approach focuses on the perception of woman as a possession of a group and therefore an attack on a woman becomes an attack on a group. Such an explanation diverts the focus from rape as a criminal act against an individual and makes it an attack against a collective to which the individual is subsumed.¹⁰⁹ This approach only reinforces the traditional, patriarchal perception of the role of women in society.

The argument on the need to protect morality used by the trial panel might give rise to a situation in which speaking up about rape would continue to be a taboo preventing women from seeking justice. As one author has commented, the reasoning applied in the *Šimšić* case "seems to create the dangerous possibility that, due to woman's "traditional position" in society (which the WCC failed to define), she may be prevented from testifying in public to preserve a sense of societal morality, even when she wants to testify in public and face her attacker."¹¹⁰

Serious concerns have been raised about the way protection of witnesses outside the courtroom has been conducted by SIPA, including the lack of professionalism by SIPA officers who have allegedly disclosed the names of some witnesses to the public or who were not able to react quickly in emergencies when the security of witnesses was at risk.¹¹¹

Representatives of NGOs supporting survivors of war crimes of sexual violence told Amnesty International about their concerns at the lack of appropriate account taken of the situation of this particular category of victims in the way SIPA deals with them. According to them, SIPA officers who are responsible for delivering summons to witnesses or for escorting them to and from courtroom at the WCC, have conducted their duties in a way which may expose witnesses to unnecessary negative consequences in the community they live. The appearance of marked SIPA cars in small communities gives rise to speculations and creates pressure on witnesses who may be forced to explain to their neighbours the reasons for SIPA visits.¹¹² Given that many survivors have never disclosed the fact that they were sexually abused during the war and that they would prefer to keep this fact secret as much as possible, Amnesty International considers that SIPA should ensure that they respect the right to privacy of the survivors.

Concerns have been also expressed about the inability of SIPA to provide witnesses at serious risk with long-term or permanent protection measures, including changing their identity or relocation within or outside of BiH. Such measures should be available as a last resort when survivors are at such serious risk that they cannot safely continue their existing lives. According to the director of SIPA, Mirko Lujić, the Agency can only provide a limited number of witnesses who qualify for such measures with this level of protection. In an interview for the daily *Nezavisne Novine* he stated that 10 per cent of witnesses are eligible for such

complex protection, however, due to the lack of resources and legal obstacles, implementation of such measures in the majority of those cases was not possible.¹¹³

4.1.5 LACK OF VICTIM-ORIENTED SUPPORT

Ensuring the attendance of victims as witnesses before courts for crimes committed in armed conflict is important, not only to address impunity and support the rule of law, but also because participating in the criminal process is essential for victims to experience justice. However, Amnesty International is concerned that measures to support witnesses at the State Court in cases relating to war crimes of sexual violence are insufficient. The lack of adequate support risks exposing victims to re-traumatization, and acting as a disincentive to the participation of other witnesses.

Support to witnesses in proceedings before the WCC is provided by the Witness Support Section (WSS). As of December 2008 the WSS employed three psychologists, three social workers and two officers.¹¹⁴

In 2008 the WSS provided support to 1,029 witnesses in war crimes cases pending before the trial panels, and to six witnesses in appellate proceedings.¹¹⁵ The vast majority of those witnesses had been summoned by the prosecution (703).¹¹⁶

The WSS contacts witnesses after the indictment in the case has been confirmed in order to assess their support needs. The services provided by the WSS, depending on these needs, can include psychological, medical and financial support. All witnesses before the WCC are eligible to receive a per diem (which in 2008 amounted to KM 15 (€ 7.50)) and reimbursement of their travel expenses. All witnesses are contacted at least three times by the WSS officers, including during the initial assessment of witnesses' needs; and to provide support during their appearance in the courtroom and 15 days after the hearing. If thereafter a witness continues to be in need of psychological support, they are referred to NGOs providing this kind of services to survivors of war crimes.¹¹⁷

Apart from protected witnesses who, due the risk of safety, are escorted to the WCC by SIPA, the majority of the witnesses are responsible for arranging their own travel to Sarajevo. Some of them are assisted in this by NGOs. Serious concerns have been raised by an association of survivors and other NGOs that, as transport connections from many places in BiH to Sarajevo are poor, with in some instances only one bus to the capital city a day, many witnesses have been in a situation in which they had to travel on the same bus with family members of the accused or with defence witnesses. This has exposed witnesses to otherwise preventable stress and pressure and may have caused some re-traumatization. It was posited that such a lack of adequate support may also be an important factor in the decision of some potential witnesses not to appear in the courtroom.¹¹⁸

In the absence of effective systems of support for survivors who may be suffering from traumatic stress resulting from the crimes, it is not surprising some survivors are reluctant to appear as witnesses. In some cases where survivors have refused, the court has imposed fines on witnesses. Many of those survivors, who were in a desperate economic situation, were not able to pay those fines and felt embittered that their decision not to testify had not been respected. Interviewed by Amnesty International, Sabiha told the organization: *"I got the summons from the State Court in Sarajevo. It said I would be fined if I do not come*

forward. Why? I do not understand. I am not a war criminal! Why do they want to punish me?"¹¹⁹

Amnesty International is of the view that it is unfair for courts to fine survivors of traumatic human rights violations, including sexual violence, who refuse to give evidence, when adequate systems do not exist to assess their ability to give evidence and to support them through the very difficult experience of giving testimony. In all cases where survivors of sexual violence are called to give evidence, a detailed witness assessment should be conducted by experts well in advance of the hearing. Where the assessment shows the survivor would be at psychological risk from testifying and they do not wish to testify, then they should be excused without punishment. Where victims are assessed to be capable of giving evidence and they still have concerns or where the assessment highlights a risk but the survivor is committed to giving evidence, every effort should be given to reassure them of the measures available to protect them including the possibility of giving evidence in closed proceedings or through video link and to provide them with psychological support before, during and after the trial; and practical assistance such as funding their travel costs.

Many studies on the prosecution of war crimes in BiH have outlined the problem of possible re-traumatization of survivors in the process of giving testimony. Amnesty International shares those concerns and emphasizes the need for a more victim-oriented protection and support approach. However, victims' participation in criminal trials and other justice mechanisms, including by giving testimonies, can positively contribute to their healing process.¹²⁰ This was confirmed by the majority of the survivors Amnesty International talked to who said they would be ready to testify if the witness support system was more sensitive to their needs.

Many survivors interviewed by Amnesty International explained how important it was for them that the perpetrators were arrested and the cases prosecuted. Aida told the organization: *"My biggest wish is that the case is prosecuted. That would be the moment of my great happiness! I cannot live normally until it happens. This person is guilty of all the bad things that have happened in my life. He set my house on fire. He wired my father's hands and took him away. He raped me. [...] I want them to arrest him so that I could be at peace again. [...] You know how it feels when you are just a kid and they take you away in front of your parents. It was so hard and I felt so ashamed... And everyday it is worse and worse... I cannot erase that from my memory...Until they arrest him..."¹²¹*

Representatives of NGOs providing psychological support to rape survivors in BiH told Amnesty International that testifying in the court can have a positive impact on victims' psychological condition provided that witnesses are adequately supported.¹²² This can include the assistance of a psychologist at the earliest possible stage, ideally before the survivor is contacted by investigators. According to the assessment of the professionals working directly with survivors, witness preparation programmes should start at least six months before the trial.¹²³

Amnesty International considers that the provision of psychological support for witnesses in cases of war crimes of sexual violence is critical to the effective prosecution of such crimes. If provided in a professional manner it can enhance not only the witnesses' experience of the justice process but also the quality and efficiency of justice in BiH. One of the biggest problems faced by the prosecutor's office is how to ensure that the trial panel is presented

with credible evidence and witness testimonies. In cases of rape and other war crimes of sexual violence gathering credible testimonies can be extremely challenging. Many survivors of those crimes continue to suffer the consequences of trauma including effects on their memory. Often they have gaps in recall and cannot account for important facts, although sometimes they still remember such details as the smell of the perpetrator's clothes or the colour of his shoes. The credibility of rape survivors as witnesses can sometimes be affected by the consequences of trauma. For example, some give inconsistent evidence, are emotionally labile and readily show signs of irritation, particularly under cross-examination. These are well-documented consequences of traumatic stress seen in survivors of torture.¹²⁴

A psychologist working with survivors of sexual abuse told Amnesty International that sometimes the abusive power of perpetrators over their victims is maintained after the initial crime, and effect caused by the traumatic experience and maintained by the stigma attached to rape.

As a result of their psychological condition many victims of rape are extremely vulnerable to manipulation by their perpetrators.¹²⁵ Furthermore, perpetrators have been reported to attempt to bribe victims to withdraw their testimony. Amnesty International is concerned that such attempts at bribery may be all the more coercive where perpetrators know that victims are living in poverty. Representatives of NGOs whom Amnesty International talked to gave examples of witnesses who allegedly decided to withdraw or change their testimony in favour of the defence in return for money.¹²⁶

Although the organization is not in the position to prove such allegations, the existence of such reports points to the fact that there is real need for the authorities to give more attention to the psychological needs of survivors of rape. It is also necessary to provide victim and witness protection schemes or other measures to ensure that victims are not further distressed; are not pressurized to withdraw their testimony; and are not threatened in any way by alleged perpetrators.

Amnesty International is concerned that the economic rights of the survivors of rape and other sexual abuses should be better enforced, not only as they are entitled to such rights, but because an improved economic situation will make it easier for victims to take forward their cases and resist attempts at bribery by the perpetrators.

4.2 THE ENTITY COURTS

Since 2003 when the new BiH Criminal Code was introduced and a set of reforms of the justice system followed, responsibility for the prosecution of war crimes cases was entrusted to the state authorities. The WCC has been playing a pivotal role in the new system. On the adoption of the BiH Criminal Code the entity Criminal Codes were amended to remove provisions relating to the prosecution of war crimes. Nonetheless a number of cases of war crimes have been prosecuted before the cantonal and district courts, in the FBiH and RS respectively. Those cases are the ones which were initiated before the entity courts prior the new BiH Criminal Code entering into force in 2003, as well as cases transferred from the WCC upon review. In addition, the understanding of the judicial system reform by the authorities in RS was such that the entity justice system retained the power to investigate new cases of war crimes which resulted in the prosecution of a number of them.

As of December 2008 there were 435 unresolved war crimes cases in the FBiH at different levels of prosecution, in which the alleged perpetrator had been identified. The number of the same category of cases in RS and in the District Brčko was 607 and 28 respectively.¹²⁷ No information is available on how many of those cases included charges related to rape and other war crimes of sexual violence. As of September 2008, there were 23 ongoing war crimes trials in the FBiH and 13 in RS.¹²⁸

4.2.1 INADEQUATE LEGAL FRAMEWORK OF THE BIH ENTITIES

Amnesty International is concerned that the application of different laws by the entities on the one hand and the state authorities on the other is creating a situation in which people charged with similar acts are being treated differently, depending on which jurisdiction they are tried in.

In contrast to the WCC which applies the BiH Criminal Code, the entity courts are applying the Criminal Code of the former Socialist Federal Republic of Yugoslavia (SFRY).

While the BiH criminal code defines and specifically punishes crimes against humanity, the SFRY Criminal Code does not define or specifically criminalize crimes against humanity. It only mentions Criminal Acts Against Humanity under a general heading of Chapter XVI. This gap is in contradiction with the current international criminal law standards. Amnesty International considers that this difference may have serious consequences in the adjudication by entity courts of cases involving rape and other war crimes of sexual violence, as many of such acts have been committed in the context of widespread attacks against the civilian population and thus would qualify as crimes against humanity.

Furthermore, while the SFRY Criminal Code recognizes forced prostitution and rape as war crimes against the civilian population, it fails to include definitions of those crimes. Bearing in mind the significance of the definition of rape in international criminal law elaborated in the jurisprudence of the ICTY and the ICTR, the lack thereof in the SFRY Criminal Code might have serious negative consequences when rape and other war crimes of sexual violence are prosecuted before the entity courts, unless the ICTY jurisprudence is applied by the courts adjudicating in rape cases.

While Amnesty International has no position on sentencing, the organization is concerned by the lack of consistency between sentences imposed by the WCC and those imposed by the entity courts.

The application by entity courts of the SFRY Criminal Code as opposed to the BiH Criminal Code in conflict-related criminal cases is also likely to produce differences in the sentencing of offenders. This is so because the most severe punishment which can currently be imposed by the entity courts applying the SFRY criminal code in conflict-related cases is 20 years' imprisonment. In contrast, the maximum sentence prescribed by the BiH Criminal Code is 45 years' imprisonment.

Amnesty International considers that the justifications provided by entity authorities for applying the SFRY criminal code rather than the BiH Criminal Code are not consistent with international law. The entity authorities have claimed that they cannot apply the BiH Criminal code, which was adopted in 2003 in cases of war crimes committed in 1992-1995, because

doing so would violate the prohibition of the retroactive application of criminal law. However, Amnesty International notes that the use of the BiH Criminal Code by entity courts would not violate this prohibition. This is because, as specified in Articles 7 of the ECHR and 15 of the ICCPR, the prohibition against retroactive application of criminal law does not apply to trial and punishment of any person for any act or omission which, at the time of its commission, was criminal according to national or international law, including customary international law. As indeed all of relevant acts and omissions were prohibited both under the SFRY Criminal Code and international law at the time that they were committed, applying the BiH Criminal Code which criminalizes these acts would be consistent with international law.

The question of non-retroactivity was considered by the Constitutional Court of Bosnia and Herzegovina (CCBiH) in the *Maktouf* case. The applicant who had been convicted by the WCC and sentenced to five years' imprisonment for war crimes against civilians claimed, among other things, that the application of the BiH Criminal Code violated the provisions of the ECHR defined in Article 7 thereof, by allowing for retroactivity. The CCBiH rejected this argument recalling the decision of the European Court of Human Rights in the case of *Naletilić* against Croatia in which the applicant raised a similar claim.¹²⁹ It also observed that according to the ECHR the ban on retroactivity does not apply to an "act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations" as specified in Article 7(2) of the ECHR.¹³⁰ It also argued that the acts punishable under the BiH Criminal Code, for which the applicant had been convicted, fell into the category of the general principles of law recognized by civilized nations.¹³¹ The CCBiH also noted the existence of the obligation of the entity courts to follow the practice of the State Court in war crimes cases by stating that: "[f]or the reasons stated above, the Constitutional Court considers that "a lack of" the entity laws stipulating these offences and safeguards at the level of the Entities imposes an additional obligation to the courts of the Entities to apply, when deciding on the criminal offences of war crimes, the Criminal Code of BiH and other relevant laws and international documents applicable in Bosnia and Herzegovina. It follows from the aforementioned that the courts of the Entities are also obligated to pursue the case law of the Court of BiH. Otherwise, by acting differently, the courts of the Entities would breach the principle of legal certainty and the rule of law."¹³²

Amnesty International considers that there is a clear obligation of the entity courts to adjudicate in war crimes cases in accordance with the requirements of international law, which are largely reflected in the BiH Criminal Code. As a matter of urgency the organization urges the relevant authorities at the state and the entity level to ensure that international law and the BiH Criminal Code can be applied in the work of the entity courts.

4.2.2 CAPACITY OF THE ENTITY COURTS AND PROSECUTORS

A representative of an NGO supporting survivors of war crimes told Amnesty International that it was a positive and symbolic step for the RS to take responsibility for prosecution of war crimes cases. According to him it showed that the entity partly recognized its responsibility for war crimes. He said that "it has a deep symbolic meaning when a Serb judge reads out a guilty verdict in the name of Republika Srpska against other Serbs for war crimes committed against non-Serb civilians."¹³³

Prosecution of war crimes cases in the communities where those crimes were committed can empower the survivors of human rights violations who can receive satisfaction and recognition of their suffering in their own communities. The establishment of the facts, identification and punishment of perpetrators through the criminal justice process can help the communities to deal with their war-time past and can lead to the establishment of long lasting peace.

However, at present, the conditions for fair and effective prosecutions of cases of war crimes of sexual violence by the entity courts are not yet met. Several gaps related to the work of entity prosecutors, courts and witness protection and support services which will be discussed below make it impossible to prosecute those crimes at the entity level in accordance with international standards for fair trials.

4.2.2.1 Investigation

The role of the prosecutors in the conduct of war crimes cases is crucial. The prosecutors are in charge of the investigation and are responsible for providing the court with admissible (good quality) evidence and witness testimonies. Investigation of crimes under international law requires a high level of specialization as those crimes are usually more complex than other crimes. In case of war crimes of sexual violence additional skills are required, including the ability to apply a gender-sensitive approach to working with witnesses. However, the importance of the work of the prosecutors in the entity courts is not adequately acknowledged by the authorities, which results in the inadequate allocation of resources for entity prosecutors' offices. A prosecutor in the RS told Amnesty International that the lack of resources was such that his office was not able to afford to buy a new tape recorder to record testimonies of victims of war crimes.¹³⁴

Further unlike in the WCC, no special investigators are assigned to assist prosecutors in the investigation of war crimes cases.¹³⁵ As a result prosecutors often have to rely on the support of local police which is problematic for several reasons.

In many communities local police forces were allegedly involved in perpetrating war crimes. Even where vetting of local police has taken place (which according to the representatives of the civil society interviewed by Amnesty International was not the case in at least some communities), many survivors of rape find it traumatic being interviewed by police officers.¹³⁶ Further, most of the police officers in BiH are male, which may make it extremely hard for female survivors to talk to them due to the very intimate nature of the criminal acts they have been subjected to. Finally, the general level of mistrust of the police in BiH is high and even more so amongst the returnee population in areas where the survivors of rape belong to the minority community and the police forces are recruited mostly from the members of the ethnic group which was responsible for war time human rights violations against them.¹³⁷ In addition, even if the police officers were not directly responsible for war crimes, many were reportedly involved in concealment of the evidence during and after the war. A rape survivor, who in 1995 reported the crime which had been committed against her that year, told Amnesty International that when she went after the war to ask the local police for a file relating to her case she discovered with consternation that the file was missing. She was told by a local police officer that the police never keep "unimportant" information for longer than necessary.

"I went to the police station to see my file after the war and I asked a police officer to show me my file. He told me they did not have it anymore. I asked him "how was that possible? I reported the case in 1995." He explained to me that they usually destroy all files after 10 years. "How is that possible?" - I asked him again. He said that that was due to the statute of limitation. I could not believe it. Why? "It was a war crime. There is no statute of limitation on war crimes" I said to him. He looked at me and said - "You know what? If there is anything important in the file we keep it. If it is not we destroy it."

“So it was not important?” - I asked. “It was important to me. All of that was important! It is important to acknowledge what happened. Important to me!”

Maja, interviewed by Amnesty International in Republika Srpska in March 2009.

Although the number of war crimes cases under investigation in different jurisdictions in BiH is very high, in most prosecutors' offices there are no prosecutors specifically assigned only to war crimes cases.¹³⁸ Reportedly, in order to improve their performance statistics the local prosecutors prefer to deal with other less complex cases which carry the same weight as the investigation of war crimes cases for the purposes of evaluation. Amnesty International urges the relevant authorities in both entities to amend the existing evaluation criteria in a manner that takes account of the relative complexity of war crimes investigations and trials in order not to discourage prosecutors from taking on more complex cases, such as war crimes cases.

Amnesty International is also concerned that in the absence of specialized prosecutors, who have enough expertise in prosecution of war crimes cases there is a risk that the indictments prepared by the prosecutors who also deal with all other aspects of criminal law could be of low quality. This may lead to unsuccessful prosecutions and as a result impunity for those responsible. It has to be acknowledged that international criminal law is a very specific aspect of law which requires additional knowledge and skills. This includes the knowledge of the ICTY jurisprudence, customary international law, the Geneva Conventions and international human rights law and standards. The war crimes under investigation were committed at least 14 years ago, which requires the use of different investigative methods and skills than in cases of crimes committed recently.

4.2.2.2 Witnesses

As was observed earlier in this chapter, support for witnesses in the war crimes cases and particularly those dealing with rape is crucial. Witnesses who do not receive sufficient practical and psychological support may not be able to testify in a structured and factual way.

Several studies indicate that witness support in entity courts systems is nearly non-existent.¹³⁹ The only exception known to Amnesty International is the cooperation between the NGO Vive Žene and the Prosecutor's Office of the Tuzla Canton in the FBiH.¹⁴⁰ Limited support to the survivors in cases investigated by the war crimes prosecutor in RS is provided by an NGO named Izvor from Prijedor, which provides transportation to witnesses and when necessary refers them to other institutions which are able to provide more specialized assistance.¹⁴¹ No witness support programmes similar to those available to witnesses at the WCC exist in any entity court systems in BiH and, for the most part, the only services of this kind are provided by NGOs.¹⁴²

A research project conducted by the United Nations Development Programme indicated that the judges in the entity courts are in general capable of handling war crimes cases. However, the research also indicates that problems – mainly caused by lack of resources – occur in relation to witness protection in the courts.¹⁴³

Most of the entity courts in BiH lack facilities to guarantee protection to witnesses. On a practical level few courts have separate entrances for witnesses and accused persons; in

some courts accused persons and witnesses have to sit next to each other.¹⁴⁴ This puts survivors at risk of re-traumatization which can make it difficult for them to give their testimonies freely and comfortably. Further, according to the information available to Amnesty International none of the entity courts have modern equipment which would enable the use of technical witness protection mechanisms, including voice distortion or testifying via video link.

4.3 STATE STRATEGY ON WAR CRIMES CASES

Unless significant resources are allocated to develop the capacity of the local courts, prosecutors and police, the implementation of the State Strategy for the Work on War Crimes Cases and consequent prosecution of this kind of cases by the entity courts, may result in the failure of the entity courts to prosecute cases in accordance with international fair trial standards. The absence of witness support and protection programmes in the entities may expose survivors of war crimes of sexual violence to re-traumatization and risk of threats, intimidation and attacks.

In order to address the issue of the massive backlog of cases, in the first half of 2008 the Special Department for War Crimes in the State Prosecutor's Office initiated a mapping exercise which aimed at identifying all existing case files which have been registered in all jurisdictions in BiH. The project, funded by the Norwegian government, is expected to be completed by the end of 2009 and will result in a database of all war crimes case files.¹⁴⁵ This database will allow for disaggregation of war crimes cases recorded according to 23 categories, including information concerning the suspects; the nature of the crime and its qualification according to the BiH Criminal Code as well as the information related to the victims of the crimes.¹⁴⁶ Amnesty International recommends that the database be constructed in such a way so as to enable the identification of the total number of cases related to rape and other crimes of sexual violence committed in the context of the conflict.

In parallel to the work on the mapping exercise conducted by the State Prosecutor's Office the BiH authorities have undertaken measures to develop the State Strategy for the Work on War Crimes Cases. Under the Strategy, adopted by the BiH Council of Ministers in December 2008, the State Court will continue to be the focal point in BiH responsible for prosecution of war crimes cases.¹⁴⁷ All cases will be registered in an inventory at the State Court. Based on the criteria set out in the Strategy the WCC and the State Prosecutor will review cases and will decide, whether a case should remain in the jurisdiction of the State Court or should be transferred to the entity courts for prosecution.

If one or more of the criteria set out in the Strategy are met the case will remain with the WCC.

According to the Criteria for the Review of War Crimes Cases "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 WCC. Further consideration will be given to "the interest 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 considers that the criteria outlined in the Strategy should be

interpreted as broadly as possible, in order to allow for all cases of sexual violence to be tried by the WCC until such time as entity courts are afforded the resources and capacity to ensure that the cases may be prosecuted in accordance with international fair trial standards.

Apart from the inadequate measures of witness support and protection in the entities which might expose the survivors to re-traumatization or further violation of their human rights, the organization is concerned about the current public perception of rape in BiH, especially in small communities, which results in stigmatization and societal exclusion of rape victims.

The BiH authorities should double their efforts to find financial resources and to improve the legal framework in order to increase the capacity of the entity courts to deal with war crimes cases. This should include ensuring the existence of the highest standards of witness protection and support.

5. THE OBLIGATION TO PROVIDE SURVIVORS WITH THE RIGHT TO A REMEDY AND REPARATION

As set out in the recently adopted United Nations Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UN Basic Principles), all victims of war crimes, including survivors of rape and other forms of sexual violence have a right to a remedy and reparation. This obligation is also enshrined in domestic law of BiH.¹⁴⁸

Reparation is the term for the concrete measures that should be taken to address the suffering of the survivors and victims and to help them rebuild their lives. The aim of reparation measures is to “as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.”¹⁴⁹ Of course, in situations where victims suffer serious harm – such as sexual violence – or when family members are killed, it is impossible to fully restore them to the situation which existed before the violation occurred. Nevertheless, the obligation to ensure that as much as possible is done to address the suffering of the victims remains.

An international coalition of women’s organizations developed a set of general principles on the right to reparation, be applied to the context of sexual violence in armed conflicts, the so called Nairobi Declaration. The declaration suggests that “[j]ust, effective and prompt reparation measures should be proportional to the gravity of the crimes, violations and harm suffered. In the case of victims of sexual violence and other gender-based crimes, governments should take into account the multi-dimensional and long-term consequences of these crimes to women and girls, their families and their communities, requiring specialized, integrated, and multidisciplinary approaches.”¹⁵⁰

States bear the primary responsibility for providing reparation to victims of human rights violations in their country. There is an express legal obligation on the state to provide reparation when violations are committed by agents of the state or under the state’s authority. In some cases, it may be appropriate for authorities to establish reparation programmes to ensure that victims have access to a range of services and benefits.¹⁵¹ When crimes are committed by agents of other states or non-state actors then the state has an obligation to ensure that victims can claim reparation against those responsible, including by making claims before national courts. When obtaining redress from other states or non-state actors is not possible or where there are obstacles that will delay vital measures of assistance required by survivors or victims, the state should step in and provide reparation to survivors and victims and then seek to reclaim any costs from those responsible.

There are five recognized forms of reparation which include a broad range of measures aimed

at repairing the harm caused to survivors and victims: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

Restitution includes measures aimed at re-establishing, as much as possible, the situation that existed before the violation happened, including restoration of property rights, employment, liberty, citizenship or residency status.¹⁵²

Compensation involves monetary payment for "any economically assessable loss."¹⁵³ Although the damage caused by the violation and the amount of compensation related to it has to be evaluated in economic terms, it does not mean compensation only covers material damage. In fact the UN Basic Principles defines damage quite broadly, including: "a) physical or mental harm; b) lost opportunities, including employment, education and social benefits; c) material damages and loss of earnings, including loss of earning potential; d) moral damage; e) costs required for legal or expert assistance, medicine and medical services, and psychological and social services."¹⁵⁴

Rehabilitation aims to address any physical or psychological harm caused to victims including "medical and psychological care as well as legal and social services."¹⁵⁵

Satisfaction includes important symbolic measures such as: verification of the facts and full and public disclosure of the truth; the search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed; the recovery, identification and reburial of the bodies of those killed in accordance with the wishes of the victims, or the cultural practices of the families and communities; an official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; public apology, including acknowledgement of the facts and acceptance of responsibility; judicial and administrative sanctions against persons liable for the violations; and commemorations, memorials and tributes to the victims.

Guarantees of non-repetition involve measures aimed at ensuring that victims are not subject to other crimes or that the crimes are not committed again. Such measures include: reforming the army and the police; strengthening the justice system, including ensuring the independence of the judiciary; educating different sectors of society in human rights and international humanitarian law education; re-integrating child soldiers back into society and; reviewing and reforming laws which contribute to or allow crimes under international law.

Not all of these forms of reparation will be required for all human rights violations. In each situation or case, a determination will need to be made about what reparation measures are needed to address the specific harm caused. This process should take into account the views of the victims, who will best know their needs, and the ultimate decision should be proportionate to the gravity of the violation.

Amnesty International believes that it is important that reparations are not perceived as a humanitarian gesture, but rather they are viewed as they are – a rights-based framework for redress. They should be based on effective consultation with the victims and related to their needs and status as victims. The underlining principle of reparation programmes should be that victims are entitled to specific rights in addition to all other rights they have, because specific crimes were committed against them which require special remedies.

Often in post-conflict situations, a lack of resources is cited by governments as reasons for ignoring the duty to ensure reparation due to survivors. This is so while often, as in BiH, massive investment is made in the country by international donors and organizations focusing on infrastructure and national institutions. Amnesty international is calling for a new approach to post-conflict strategies which ensures that addressing the suffering of the victims is placed at the top of the agenda and that reparation projects receive the political commitment and funding they require.

6. FAILURE TO PROVIDE REPARATION

“This nation forgets everything. They forget about us victims. But I will never forget about what happened to me.” Sabiha, interviewed by Amnesty International in March 2009 in FBiH.

Successive governments of BiH have failed to guarantee the rights of the survivors of war crimes of sexual violence by not providing them with any meaningful measures of reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

Amnesty International's research indicates that for many survivors, their suffering continues in silence. Many continue to suffer trauma and other physical and psychological symptoms. They often cannot or do not want to return to their pre-war places of residence because they are too traumatized to do so and because the perpetrators of the crimes they have experienced are still at large and continue to live in the same communities. Many survivors live in poverty and are not able to find or maintain jobs because they suffer from the psychological effects of rape. Ethnic discrimination in employment continues and the general economic situation in the country is dire, with an unemployment rate of 23.4 per cent which further hampers survivors from getting a job.¹⁵⁶ Access to appropriate health services is often not available to them and their local communities often exclude and stigmatize them.

Selma is in her late thirties. Before the war she used to live with her husband and two children in the municipality of Srebrenica. Her husband was killed, along with thousands of other men and boys, in July 1995 in Potočari by members of the Bosnian Serb Army, which was led by general Ratko Mladić. Selma described how some of the soldiers raped her in Potočari. She told Amnesty International “During those couple of days all the worst in the world happened to me. I felt I was frozen completely.”

Since then, Selma has been struggling to rebuild her life. She is deeply traumatized and suffers post-traumatic stress disorder as well as gynecological problems related to rape. She told Amnesty International how difficult it was for her and her family to survive.

“I have my husband's pension which amounts to KM 100 (€ 50) per month. But they can take it away now as I am not 45 years old yet so they claim I am ready to work. My son receives KM 300 (€ 150) as a member of a *šehid* family.¹⁵⁷ The problem is that next year my son will be 18 years old and he will lose the right to this money. We have a loan to pay because we have renovated the house and it is KM 220 (€ 110) per month. I am not sure how we will pay the loan back. We mostly live from the land, but we need money to rent a tractor or to get seeds.”

Selma's testimony resembles that of thousands of women who were raped and experienced other forms of crime and abuse during the war in BiH and who now struggle to survive.

6.1 FAILURE TO PROVIDE COMPENSATION

"How much time has passed? 15-16 years? And I have not received a penny..." - Nejra, interviewed by Amnesty International in March 2009 in FBiH.

The BiH authorities have failed to provide survivors of war crimes of sexual violence with adequate compensation. This failure manifests itself in the existence of serious gaps in the entity laws on civilian victims of war as well as their implementation, which discriminate against women war survivors. The failure is also evident in the inadequate legal assistance provided to survivors seeking compensation from individual perpetrators in court proceedings as well as in non-inclusion of compensation claims in criminal proceedings.

In the public discourse, the notion of reparation has been largely misunderstood, as the government of BiH misrepresented the issue to the public by suggesting that the possible compensation to victims of war-time human rights violations would be paid by the government of Serbia should the International Court of Justice (ICJ) rule in favor of the BiH claim. However, in February 2007 the ICJ ruled that Serbia had not committed genocide against BiH although it failed to prevent it from happening in Srebrenica. The judgment further established that Serbia failed to fulfill its international obligations by not cooperating with the ICTY and by not arresting and transferring Ratko Mladić to the Tribunal. The issue of compensation, however, was not addressed by the ICJ.¹⁵⁸ Subsequently the issue of compensation for civilian victims of war, including survivors of sexual violence, has remained unaddressed by the BiH authorities.

6.1.1 FAILURE TO PROVIDE ADEQUATE COMPENSATION

The BiH authorities have undertaken some measures which provide victims of sexual violence with social benefits which are related to their status as civilian victims of war.¹⁵⁹ The status of civilian victims of war entitles them to receive social benefits, as provided for in laws in both of the semi-autonomous administrative entities of BiH, the FBiH and the RS. However, Amnesty International considers that there are serious gaps in these laws, and in their implementation, which discriminate against women war survivors.

The Law on the Protection of Civilian Victims of War in RS offers special measures of social protection to persons who have suffered damage to their bodies through assault, rape, detention or otherwise, and whose bodily damage is at least 60 per cent. Family members of those civilians who were killed or "disappeared" are also entitled for such assistance under the above-mentioned law. The law does not recognize victims of rape as a separate category of victims. Persons granted the civilian victim of war status in RS can also benefit from additional entitlements prescribed by the law. Civilian victims of war in RS are eligible for monthly benefits ranging between KM 100 (€50) and KM 350 (€175.50) depending on their bodily damage assessed by a health commission.

Similarly, the Law on the Basis of the Social Protection, Protection of Civilian Victims of War and Families with Children in the FBiH defines a civilian victim of war as a person who has suffered, during the war or the immediate threat of war, and due to wounding or some other form of war torture, damage to the body, including mental damage or significant deterioration of health, disappearance or death of such a person.

The law however, makes a distinction between a civilian victim of war and a person eligible

for the status of civilian victim of war. The distinction is based on the percentage of bodily damage which has to be at least 60 per cent in order for a person to be eligible for the status. However, survivors of rape are recognized as a separate category of victims and the threshold of 60 per cent bodily damage does not apply to them. The amount of monthly social benefits for the survivors of rape in the FBiH is KM 563 (€281.50). Civilian victims of war in the FBiH are also entitled to receive additional non-financial benefits such as priority in housing and employment.

6.1.1.1 Discrimination against women survivors

Women survivors of war crimes of sexual violence in both entities are discriminated against in the level of social benefits available to them in comparison to war veterans.

Existence of this kind of discrimination was recognized by United Nations Committee on Economic, Social and Cultural Rights (CESCR), in its 2006 Concluding Observations following its examination of the report of BiH on the implementation of the International Covenant on Economic, Social and Cultural Rights. The Committee observed "with deep concern the extent of the discrepancy between the significant budget allocations for financing the pensions of military victims of war and the comparatively low resources allocated to social protection [...]" for civilian victims of war.¹⁶⁰

It further recommended that the authorities of BiH "ensure a more equitable allocation of existing funds to social protection, in particular of civilian war victims, with a view to reducing the discrepancy between, inter alia, the budgets for civilian and for military victims of war."¹⁶¹

According to the information available to Amnesty International, as of May 2009, the BiH authorities had failed to implement this recommendation of the CESCR.

This issue and its consequences were also highlighted in the EU's 2008 Progress Report on BiH which stated that "[t]he preferential treatment of war veterans in terms of social benefits continued to have adverse effects on other socially vulnerable persons and persons with disabilities, who often lack access to health protection and the labour market."¹⁶²

In the 2008 budget of the FBiH the financial resources allocated for pensions for war veterans amounted to KM 335 155 000 (€ 167 577 500) whereas the budgetary allocation of financial resources for civilian victims of war was almost 9 times less and amounted to KM 38 500 000 (€ 19 250 000).¹⁶³ According to the media reports, together with the economic crisis and the need to readjust the next year's budget it is expected that the gap will increase even more.¹⁶⁴

As it was already mentioned above, civilian victims of war in the FBiH and RS receive much lower social allowances based on their status comparing to the war veterans.

In RS, the bodily damage which, upon assessment by a health commission, qualifies persons to receive social benefits also differs between the two categories of war victims. War veterans are eligible for support from the entity authorities if their bodily damage amounts to 20% whereas civilian victims of war, including survivors of rape and other crimes of sexual

violence, have to prove that they have sustained 60% of bodily damage.¹⁶⁵

The same provisions relating to the threshold of the bodily damage for war veterans and civilian victims of war exist in the FBiH where, similarly to the regulation in RS, war veterans can receive social benefits upon meeting the criteria of 20% bodily damage whereas civilian victims of war have to prove the bodily damage of 60%.¹⁶⁶ This provision however does not apply to victims of rape and other forms of sexual violence who according to the law in the FBiH are recognized as a separate category of victims and the regulation relating to the assessment of the bodily damage does not apply to them.

Discrimination against survivors of rape and other forms of sexual violence in the FBiH derives directly from the Law on the Basis of the Social Protection, Protection of Civilian Victims of War and Families with Children which prescribes the maximum monthly financial allowance for the civilian victims of war which should equal 70 per cent of the maximum allowance available to war invalids.¹⁶⁷

6.1.1.2 Discrimination in the level of social protection depending on the entity

Survivors of war crimes of sexual violence are discriminated against in the level of social protection they are eligible for depending on their place of residence. Amnesty International is concerned that those living in the RS are much worse off when compared to those living in the FBiH as they are entitled to much lower social pensions. If they have not done so already, they are also not able to register their claims as civilian victims of war as the deadline for application has already expired.

The law in RS regulating the status of civilian victims of war defined deadlines by which prospective applicants had to register their claims for the status. The deadlines were extended several times and following the last amendment of the law the final deadline for applications expired on 31 January 2007. This excluded a large group of potential applicants from claiming their rights.

Many women with whom Amnesty International spoke and who were likely to have been eligible, for various reasons did not feel able to come forward at that time to register their claims. Some of them were unaware of the law (or the time limit). Some had problems in obtaining all medical documentation required to prove their claims due to the lack of appropriately qualified doctors who would be able to provide them with such documentation or because they lost the medical documentation which was issued during the war or because it was destroyed. In the absence of psychological support many were too traumatized to actively claim their rights. All claims submitted after 31 January 2007 have been automatically rejected.

Maja, who suffers from post-traumatic stress disorder, HPV,¹⁶⁸ chronic anemia, colitis and back pain, lives in the RS. Interviewed by Amnesty International she described her experience of seeking social benefits in her municipality: "I went to the Social Welfare Centre but they told me they could not help me. They told me I was not disabled and that because my parents were receiving social benefits and I lived with them I was not eligible to get any help."¹⁶⁹ Maja and her two elderly parents live in a remote part of Republika Srpska trying to survive on social benefits of KM 50 (€ 25) per month in total for three of them.

The majority of survivors of rape and other forms of sexual violence in RS receive social benefits of KM 100 (€50) per month which is significantly less compared with the same category of war victims in the FBiH who are eligible for KM 563 (€281.50) per month.

Apart from the differences in the amount of the monthly allowance available to survivors of rape and other forms of sexual violence in both entities, there are also discrepancies in other social entitlements guaranteed by the law. For example, according to the law in the FBiH the civilian victims of war in this entity can claim priority in allocation of housing and in employment, though this is often not the case in practice. Those entitlements are not guaranteed in RS.

6.1.1.3 Discrimination in application for the status of civilian victim of war

According to the UN Basic Principles, “[v]ictims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.”¹⁷⁰

Amnesty International is concerned that the authorities in both entities have failed to respect the dignity and psychological conditions of the survivors of war crimes of sexual violence in the procedure of applying for the status of a civilian victim of war.

Republika Srpska (RS)

As noted above according to the law in RS applicants had to apply for the status of civilian victim of war by the deadline of 31 January 2007. This excluded a proportion of potential applicants from accessing their rights.

According to the procedure in RS, prospective applicants had to register their claims in the municipalities where they lived, usually with the Departments for Protection of War Veterans and Invalids. Applications had to include medical documents to prove the extent of bodily damage.

Social benefits available to civilian victims of war depended on the percentage of the bodily damage which was assessed by health commissions and which had to exceed 60 per cent in order for a victim to be eligible for them. The assessment of bodily damage was conducted based on the “Rulebook on criteria for estimation of military disabilities.” Civilian victims of war suffering post-traumatic stress disorder or other forms of psychological (rather than bodily) damage were not entitled to social benefits.

This excluded a large proportion of potential claimants from receiving social benefits as in many cases health damage incurred by the survivors of war crimes of sexual violence was mostly psychological. Amnesty International was told that after protests by victims’ associations health commissions in the RS followed the practice of granting up to 50 of the bodily damage entitlement in cases of psychological impairment.¹⁷¹ Despite that survivors of

rape in RS still had to prove an additional 10 per cent of physical bodily damage, in order to be eligible for the status and social benefits attached to it. This was however often impossible as some survivors did not suffer from physical syndromes which could be qualified as the additional 10 per cent of bodily damage.

International human rights standards require states to ensure the full and equal enjoyment of human rights to persons who are living with disabilities which may be linked to physical or mental conditions or impairments.¹⁷² The government has not provided any objective justification for the differentiation drawn between people who have suffered bodily damage and other who are suffering from post-traumatic and other forms of psychological damage, which may be equally if not more incapacitating. The CESCR has emphasised that the "Covenant [...] prohibits any discrimination, whether in law or in fact, whether direct or indirect, on the grounds of [...] sex, [...] physical or mental disability. [...] Restrictions to access to social security schemes should also be reviewed to ensure that they do not discriminate in law or in fact".¹⁷³ As the large majority of civilian victims of war who are experiencing post-traumatic and other forms of psychological damage are women victims of rape, there is also a concern that this may result in *de facto* discrimination against women and survivors of sexual violence.

Prijedor

Amnesty International is extremely concerned that in some municipalities in RS those allegedly involved in war crimes still occupy positions in the social welfare system of the entity and hold posts making them responsible for deciding about the entitlements of civilian victims of war.

In the municipality of Prijedor the position of the director of the Social Welfare Centre is occupied by a man who during the war was the Commander of the Territorial Defence at the Prijedor Garrison.¹⁷⁴ In addition, the current head of the Department for Protection of War Veterans and Invalids who used to work as an interrogator in the concentration camp at Omarska.¹⁷⁵

Amnesty International is of the view that despite the fact that the above-mentioned individuals have not been convicted in relation to war crimes, their presence in the social welfare system of RS may undermine the credibility of the welfare system of the entity and discourage survivors of war crimes, including rape victims, from seeking assistance from the entity institutions. It is also not acceptable that individuals who were involved in the work of concentration camps, even if not convicted, have the power to decide about the entitlements of their former inmates.

Federation of Bosnia and Herzegovina (FBiH)

The procedure by which women may apply for the status of civilian victim of war in the FBiH is neither transparent nor sensitive to the psychological needs of the survivors. The procedure itself may cause re-traumatization.

The procedure of applying for the status of a civilian victim of war in the FBiH requires potential claimants to obtain confirmation of their situation by an association of victims of sexual violence - Žene Žrtve Rata (Women Victims of the War) which is the only institution designated in the FBiH to provide this category of victims with such certificates. Such confirmation is provided based on an interview with a potential claimant conducted by

members of the association.

Amnesty International is concerned that the interview procedure is not sensitive to the psychological needs of the survivors.

The NGO does not employ a psychologist to assist the survivors in the process of giving their testimony. An interview is conducted in the presence of several persons which unnecessarily exposes the survivors to stress. The risk of re-traumatisation of interviewees is not addressed.

Taida told Amnesty International that she was discouraged from applying for the status for the following reasons: "I wanted to get the civilian victim of war status and I was thinking about registering but I have no courage to go through the trauma again. I am not able to tell anybody what happened to me. It is too painful and dreadful. I am ashamed of myself and I am ashamed to admit it to myself. Not to mention other people."¹⁷⁶

The interviews take place in the premises of the organization which consist of one room on the ground floor of a block of flats. Privacy cannot be guaranteed as the same room is used for all other activities of the NGO. This environment is not conducive to making victims feeling relaxed and comfortable giving their testimonies. In addition to this passers-by can see from the street who is in the room as the office of the organization is situated on the ground floor with big shop windows.

Emina told Amnesty International about her experience of applying for the status and how she felt intimidated while giving her statement: "I went there to give my testimony but I could not say anything. I was shocked and I was unable to speak. I could not. My brain stopped working. Then I came back home. I was crying. Fifteen days. Every day for 15 days... And usually I never cry... Then I sat and wrote them a letter... Long letter... Four pages... I have sent it to them and to SIPA."

The association does not have local branches in other parts of the FBiH and therefore all potential applicants have to travel to Sarajevo. Many places in BiH are poorly connected with Sarajevo with often only one bus per day going to the capital city. Moreover, the premises of the organization are not easy to reach as they are situated in the distant suburbs of Sarajevo. The nearest tramway stop linking this neighborhood with the centre of Sarajevo is about a 20 minute walk. This may extend the time women need to spend travelling to visit the association and may be a serious obstacle in accessing the place, especially if the women live far away from the capital city.¹⁷⁷

The head of the association confirmed to Amnesty International that the organization offered testimonies of the survivors of rape as evidence to the State Court of BiH in criminal proceedings against those responsible for war crimes. Potential applicants had to sign to agree for their testimonies to be used in this way.

Nusreta was concerned about this practice and said that the privacy of the survivors who do not wish to apply for the status was not respected. This put her off from applying. She stated "if I go to register they would ask me - "who else do you know who got raped? Do you know any other women?" and so on and so on. But I do not want to tell them. I do not want anybody to blame me for that." She feared that if she decided to go ahead with the interview

with the association in order to claim the status her testimony could be used in the court and as a result other persons who did not wish to disclose what happened to them could be summoned by the court as witnesses in war crimes proceedings.

Pressure exerted on women survivors by members of the association was observed in the judgment in the Šimšić case before the State Court of BiH. According to the verdict in that case, one of the witnesses in the trial "confirmed, although no such question was asked, that she had been pressured by the President of the Association – Women Victims of the War to testify against Boban Šimšić as the other women did or otherwise she would no longer receive her pension [...]"¹⁷⁸

Amnesty International is of the view that survivors of rape should not be forced to testify in criminal proceedings if they do not wish to do so in order to be eligible for social benefits. Requests for victims to testify should be made only in accordance with criminal procedural law and only when it is deemed necessary after exploring other means of building cases that pose less risk to the dignity and wellbeing of victims. The government of FBiH should offer an official alternative mechanism for victims seeking compensation if Women Victims of the War fails to objectively carry out its role in accordance with the rights of victims.

Prosecutors must maintain their independence in the selection and preparation of cases. Only officials such as prosecutors, investigators or defence attorneys should play a role in preparing witnesses to testify at trial, in order to avoid calling into question the fairness of judicial proceedings. The role of NGOs should be to provide psychological and social support to the survivors and witnesses in war crimes cases so that they would feel psychologically ready to face their perpetrators in the courtroom without the risk of re-traumatization.

Following the interview with the head of the association, Amnesty International is concerned that the appeal process, in case the NGO refuses to issue a confirmation, is not fair or transparent as the only way to complain at this initial stage is to appeal to the same NGO which conducted the interview and the appeal criteria have not been established.¹⁷⁹

The discriminatory provisions in the procedure for applying for the status of civilian victims of war in the FBiH may discourage many survivors of sexual violence from applying for this status and may consequently exclude them from receiving the social benefits which are attached to it. According to information received by Amnesty International, as of December 2008 only 500 women in the FBiH were in receipt of social benefits due to civilian victims of war.¹⁸⁰

6.1.1.4 Inadequate amounts of social benefits

As a result of the procedure for applying for the status of civilian victim of war in RS by which all potential applicants are evaluated based of the extent of bodily damage, the majority of survivors of rape receive the lowest monthly social allowances amounting only to KM 100. This is not enough to cover basic needs of the survivors, including buying medicines. For example one of the survivors told Amnesty International that she spent more than KM 140 (€70) per month only on medicines.¹⁸¹

In the FBiH many survivors of war crimes of sexual violence interviewed by Amnesty

International received only temporary decisions related to their status. They claimed that this exposed them to uncertainty and caused a deterioration of their psychological conditions as they were not sure whether they would be able to cover their living expenses and afford medicines in case their decisions were revoked.

Nejra who received the status in January 2008 said "What can I get out of this temporary decision? Nothing! If I only knew I would not have taken it at all. I would have not even gone to register."¹⁸²

Some survivors said that often money did not arrive on time as part of their allowances were paid from the budget of the FBiH and the rest from the cantons which are directly responsible for providing support to civilian victims of war. Talking about this problem Nejra added, "I get some money from the Federation and some money from the canton. You get KM 164 from the canton and they say "now you wait for the Federation to pay." Sometimes I call the postman and ask him about the money and he says "yes, I know we were told that we have to pay you but there is no cash to pay."¹⁸³

The CESCR has emphasised that "Benefits whether in cash or in kind, must be adequate in amount and duration in order that everyone may realise his or her rights to family protection and assistance, an adequate standard of living and adequate access to health care, as contained in articles 10, 11 and 12 of the Covenant. State parties must also pay full respect to the principle of human dignity contained in the preamble to the Covenant, and the principle of non-discrimination, so as to avoid any adverse effects on the level of benefits and the form in which they are provided".¹⁸⁴

6.1.2 CLAIMING COMPENSATION FROM INDIVIDUAL PERPETRATORS

The number of cases of individual compensation for victims of human rights violations committed during the war in BiH is extremely small. Some compensation has been granted to families of victims of the Srebrenica massacre¹⁸⁵ and to the families of victims of enforced disappearances¹⁸⁶ based on the rulings of the BiH Human Rights Chamber.¹⁸⁷ In 2007 the Association of Concentration Camp Inmates of BiH and the Association of Concentration Camp Inmates of RS sued RS and the FBiH respectively for unlawful detention and torture of their members but the cases are still pending before relevant courts.¹⁸⁸

The legal framework for claiming compensation for war-time damages in civil proceedings is complex in BiH and both entities regulate the issue differently. Moreover, application of the relevant law of the Socialist Federal Republic of Yugoslavia (SFRY) in cases of compensation claims is also required.¹⁸⁹

According to a report by a network of NGOs from the former Yugoslavia working on facing the past in the region "[v]ictims often do not know whom to sue – the direct perpetrator or the state. If they elect to sue the latter, they are uncertain which entity to sue, and whether they should additionally sue the state of BiH."¹⁹⁰

After having talked to the survivors of rape and other forms of sexual violence as well as to the NGOs representing them, Amnesty International is concerned that free legal aid provided by the state in compensation cases is not available to prospective applicants.

Although the Law on Free Legal Aid was adopted by the Council of Ministers of BiH in December 2008 it is yet to be discussed and approved by the BiH Parliament.¹⁹¹ Free legal aid services are however provided by the NGOs but due to their lack of resources and a large number of applicants they are not able to assist all survivors. All survivors to whom Amnesty International spoke were either not aware of the possibility of claiming compensation in civil proceedings or were not able to access free legal aid.

Emina told Amnesty International that she wanted to sue the individual perpetrators “[b]ecause it is clear that there is nothing coming from the state. I was looking for a lawyer and went to an NGO but they told me that they could not help me.” Explaining her expectations she stated “what I need is a lawyer to file a case for me. I am not asking for too much. I just want to sue them and let them pay me KM 100 (€50) every month for the next 20 years. Fine, if they cannot pay KM 100 let it be KM 50 (€25) but let them pay while I am still alive.”¹⁹²

Some survivors have been also trying to sue those responsible for war crimes before foreign courts. In 2000 the US District Court for the Southern District of New York ordered compensation amounting to \$US 745 million from Radovan Karadžić to a group of 12 women, including Jadranka Cigelj and Nusreta Sivac, who were victims of rape and torture in the Omarska concentration camp.¹⁹³ Despite the fact that compensation has not been paid, Nusreta Sivac felt it had a positive moral meaning to her as what happened to her and other women in the Omarska camp was acknowledged in a court decision.¹⁹⁴

According to the BiH Criminal Code it is also possible for the victims to be granted compensation in the criminal proceedings before the State Court. The law stipulates that compensation claims on behalf of the injured parties should be applied for by the competent prosecutor.¹⁹⁵ In practice however this never happens. Prosecutors in war crimes cases before the WCC of the State Court have been very reluctant to gather information which would allow the court to assess the damage and enable the victims to claim compensation as that would extend the length of the proceedings. In some cases trial panels failed to inform victims that they had the right to apply for compensation from the accused in criminal or civil proceedings.¹⁹⁶

Victims of human rights violations are entitled to claim compensation in criminal and civil proceedings. They are also entitled to be informed about their rights, including the right to compensation by the competent prosecutor or trial panel.

For many survivors of war crimes of sexual violence in BiH the concept of justice is broad. What they often want to see as an outcome of war crimes trials is, as they have explained to Amnesty International, “restoration of their dignity.” According to them this includes compensation from individual perpetrators for the damages they incurred as a result of rape or other forms of sexual violence.¹⁹⁷

The BiH Code of Criminal Procedure allows for the prosecutors to enter plea agreements with the accused in the proceedings before the State Court of BiH. At least one case, that of Veiz Bjelić who was charged, among other things with rape, the trial finished upon signing a guilty plea agreement. Associations of victims were concerned however that in this case the victims concerned were not consulted before the agreement was made.¹⁹⁸

Amnesty International considers that plea agreements may play a positive role in bringing justice to the survivors of war crimes of sexual violence as long as those concerned have a chance to express their views as to what they perceive as a fair outcome to the trial for the human rights violations they experienced. The organization observes that following consultation with the survivors, prosecutors working on war crimes cases could include compensation claims in plea agreements with the accused. This would decrease the possibility of re-traumatization of witnesses, as they would not need to testify in separate civil court proceedings and would give the victims the chance to receive financial reparation for the damages which occurred as a result of the violations of their rights.

6.2 FAILURE TO PROVIDE RESTITUTION

Amnesty International is concerned that in many places in the country conditions for “safe and dignified” return are not yet in place as discrimination against returnees is still a serious issue. The 2008 EU Progress Report on Bosnia and Herzegovina observed that “Returnees still face discrimination in employment, access to health care, education, pensions and social rights - especially when returning to areas where they are in a minority position. This remains the biggest obstacle to a sustainable return.”¹⁹⁹

Many survivors of rape were also victims of other human rights violations which were part of organized campaigns against the civilian population. This included forceful displacement. During the war in BiH around 2 million people became refugees or were internally displaced. The property of many people was destroyed as a result of military action. Often persons occupying socially owned apartments were expelled and denied their occupancy and tenancy rights.²⁰⁰ In many places in BiH workers were illegally dismissed from work as part of organized campaigns against the civilian population and were not permitted to return to their jobs after the war.

Amnesty International is concerned that the BiH authorities have failed to provide survivors of rape with meaningful measures of restitution, as defined by the UN Basic Principles. Even in cases where restitution measures were offered, they have often failed to adequately respond to the special support needs of the survivors. After having talked to survivors of war crimes of sexual violence and their associations, Amnesty International is of the view that the most urgent measures of restitution should include restitution of property and employment.²⁰¹

6.2.1 FAILURE TO PROVIDE SURVIVORS WITH RESTITUTION OF PROPERTY

In BiH restitution of property is mostly understood as return to one's home and restitution of property rights. According to the UN's refugee agency (UNHCR) statistics, as of December 2008 more than 1 million people have returned to their pre-war places of residence.²⁰² The international community in BiH, which to a large extent facilitated the return process, perceived restitution of property as a tool to reverse the effects of war-time “ethnic cleansing”. It was believed that return of refugees and internally displaced persons (IDP) to their pre-war homes could, in the long term, have a positive impact on enabling reconciliation.²⁰³ The property repossession process, the so called the Property Law Implementation Plan (PLIP), was officially completed by the end of 2006 with more than 95 per cent property repossession claims resolved.²⁰⁴

Many survivors of rape and other war crimes of sexual violence were internally displaced during the war and held IDP status which enabled them to stay in alternative accommodation

and claim certain social benefits, including financial aid. According to the laws in the FBiH and RS, internally displaced persons are entitled to such status as long as "safe and dignified" return to their pre-war homes is not possible.²⁰⁵ When obstacles to return cease to exist those displaced are expected to return and are not longer entitled to any benefits resulting from the status. The entity laws, however failed to defined the conditions for the "safe and dignified" return. As a result many displaced people, including women survivors of rape, had no other option but to return to the places where they used to live before the war otherwise they would become homeless even when they themselves might not have characterized the relevant conditions as "safe and dignified".

The problem has been recognized by among others the Committee on the Elimination of Discrimination against Women (CEDAW) which expressed concerns "at the pending threat of eviction from their accommodations in the Federation of Bosnia and Herzegovina of women who are civilian victims of sexual violence and internally displaced persons."²⁰⁶

Many survivors of sexual violence told Amnesty International that they would still fear for their safety if they had to return, as those responsible for war crimes committed against them still remained at large and lived in their pre-war communities. Some victims were too traumatized to go back and thought they would never be able to live in the same communities. They felt that the failure of the BiH authorities to arrest the perpetrators and prosecute war crimes which were committed against them, prevented them from going back. Aida, one of the survivors, told Amnesty International "When I go by car through the village where I used to live I can see all of them. This one is Chetnik²⁰⁷, that one is Chetnik, and the other one as well. All of them are my former neighbours. None of them got arrested. I gave my testimonies many times. I know all of them – their names and surnames. I survived three shootings. I was taken away from home by my neighbour Goran! Community? What kind of community is that? It does not exist any more."

Amnesty International is concerned that a narrow perception of property restitution, which was understood in BiH mostly as return to one's pre-war home, may have had a negative effect on the decisions of individuals who felt pressured to return to their pre-war homes as other options of restitution of their property rights have not been meaningfully considered by the agencies facilitating the process.

Amnesty International is also concerned at the failure of the agencies implementing return programmes to recognize the rights of women survivors of war. In many cases the implementation of such programmes was not gender sensitive which resulted in the property and tenancy rights and other benefits resulting from such programmes being attributed mostly to men, as heads of households.

Nejra lives with her family in a collective centre for IDPs. She described to Amnesty International how she was raped and her parents killed during the war, adding that:
"I will never return there. Never. This is the place where my parents were killed. It is where they raped me. I will never forget. I cannot live there. I pass by only when I go to Potočari to pray for my family members. I will never go back there and I will never ask for any aid for returnees. Never. They will not make me do that. What if I did that? All aid for us as returnees would be given to my husband as he is the head of the household. And what about me? No, I do not want that!"²⁰⁸

Amnesty International urges the BiH authorities responsible for return programmes to take into consideration the needs of the victims of war crimes of sexual violence and to devise return programmes in a gender-sensitive way.

6.2.2 RESTITUTION OF EMPLOYMENT

In a 2006 report Amnesty International concluded that ethnic discrimination in employment, which had its roots in the war-time policy of "ethnic cleansing" and which resulted in mass dismissals of workers belonging to the other ethnic group, still had a negative impact on the employment situation in the country. It observed that many employees were not able to return to their pre-war work places and that measures to reintegrate them into the labour market were not in place in BiH. The employees who had been illegally dismissed have still not received compensation for those discriminatory actions.²⁰⁹

Women are an especially vulnerable category in the labour market. Not only are they discriminated against on the basis of their ethnicity but also on the grounds of their gender. In 2008, the EU Progress Report on BiH stated that "no serious measures have been undertaken to address the problems related to women's access to labour market. As a consequence, discrimination of workers on the basis of gender remains widespread, women continue to be under-represented in business and politics, and their salaries are generally lower than those of men."²¹⁰

Survivors of war crimes of sexual violence and representatives of their associations interviewed by Amnesty International told the organization that stable employment is one of the most desired conditions which they believe would help them to rebuild their lives.²¹¹

According to the law in the FBiH civilian victims of war, including survivors of rape and other forms of sexual violence, are entitled to financial social benefits. The law also stipulates that they are entitled to receive preferential treatment in employment. They should also be able to access vocational training and benefit from other measures to help them qualify for jobs.²¹²

This part of the law however, remains largely unimplemented. Amnesty International was told by officials of the FBiH Ministry of Labour and Social Policy that, this was due to the lack of resources mostly in the cantons which were directly responsible for the implementation of the law. The organization was told that the lack of implementation of this part of the law on civilian victims of war in the FBiH was the biggest failure in providing assistance to the survivors of war.²¹³

In RS however, the right to preferential treatment in employment or to vocational training is not enshrined in the law on the civilian victims of war at all.

Asked whether she was happy with the social benefits she received as a civilian victim of war, Emina said "I would prefer to have a job. I would have a health insurance and a pension when I am retired and maybe KM 300 (€150) salary. It does not have to be more. I would feel so much better. I would not feel like a beggar."²¹⁴

Almost all survivors interviewed told Amnesty International that a stable job, apart from being an income generating activity, would have a very strong positive therapeutic impact for them. Many of them also thought that vocational training would have a positive impact on their

psychological well-being.²¹⁵

Amnesty International is concerned that the authorities of BiH have failed to provide survivors of war crimes of sexual violence with measures of restitution of their pre-war employment or to provide them with other measures which would enable them to successfully seek employment.

The organization calls on the authorities of the FBiH to fully implement the existing law by giving priority in employment and vocational training to survivors of war crimes of sexual violence.

Amnesty International urges the authorities of RS to amend the existing law so as to afford survivors of rape and other forms of sexual violence preferential treatment in employment and vocational training.

6.3 REHABILITATION

“Everybody says that this will be all gone. But I cannot forget. It remains deep in me. I have been attending therapy for three years now. I take my pills but sometimes I feel as if I was dead.” - Sanja, interviewed by Amnesty International in FBiH in March 2009.

“I was in a dark tunnel with no exit. It was blocked. So you go and go and go through the tunnel but you cannot reach anywhere...And this tunnel comes back to me sometimes. All the same things which you cannot go through...It is getting better and better with time but a trace of it remains in you forever...” - Jasmina, interviewed by Amnesty International in FBiH in March 2009.

Amnesty International is concerned that the BiH authorities have for the last 14 years ignored the rehabilitation needs of the survivors of war crimes of sexual violence. They have failed to provide them with adequate measures of rehabilitation, including with access to physical and mental health services. Even in 1993 when the war in BiH was still ongoing the UN Special Rapporteur on the situation in the former Yugoslavia, Tadeusz Mazowiecki, recommended to the UN Commission on Human Rights that: “[a]ll victims of rape, whether or not they are refugees, should have access to the necessary medical and psychological care. Such assistance should be provided within the framework of programmes to rehabilitate women and children traumatized by war [...]”²¹⁶

These recommendations have yet to be implemented. The survivors of rape continue to lack adequate access to medical and psychological care in BiH.

The authorities of BiH are obliged to provide the survivors of rape and other forms of sexual violence with measures of rehabilitation in order to enable them to rebuild their lives. Under Article 21 of the UN Basic Principles measures of rehabilitation required by survivors of those crimes in BiH should include “medical and psychological care as well as legal and social services.”²¹⁷

The obligation of the BiH authorities to provide the survivors of rape and other forms of sexual violence with adequate psychological and medical care derives also from the right to the highest attainable standard of physical and mental health which is enshrined in the International Covenant on Economic, Social and Cultural Rights.²¹⁸ According the World

Health Organization, health should be understood broadly as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”²¹⁹

Realization of some rights, like the right to health, is to some extent dependent on availability of resources. Some countries, like for example BiH, are not able to provide the same level of services as the most developed countries. Having said that, according to international standards, all countries notwithstanding their economic situation, are obliged to ensure realization of “minimum core obligations” with respect to the right to the highest attainable standard of physical and mental health. In the context of survivors of rape and other forms of sexual violence those minimum core obligations should include the right of access to health facilities, goods and services on a non-discriminatory basis; the provision of essential drugs; and the equitable distribution of all health facilities, goods and services.²²⁰

The Special Rapporteur on the Right to Health has stated that “Rape and other forms of sexual violence [...] all represent serious breaches of sexual and reproductive freedoms, and are fundamentally and inherently inconsistent with the right to health”.²²¹ The Committee on the Elimination of Discrimination Against Women has also emphasized that gender-based violence impairs a range of human rights including the right to health.²²² The Committee has stated that state parties should ensure as part of their obligations that they protect rights relating to women’s health, for example; “The enactment and effective enforcement of laws and the formulation of policies, including health care protocols and hospital procedures to address violence against women and abuse of girl children and the provision of appropriate health services”.²²³

It is therefore essential that adequate reparation for survivors of rape includes provision of adequate, timely and appropriate health services, consistent with the right to the highest attainable standard of physical and mental health,²²⁴ which address the impact of sexual violence on women’s health.

According to the UN Committee on Economic, Social and Cultural Rights, in order to meet international standards, all health services and goods (for physical as well as mental health care) should fulfill the following criteria:

- *Availability* – functioning public health and health-care facilities, goods and services should be available in sufficient quantity within the state. The Special Rapporteur on the right to health has emphasized in relation to mental health care that this includes “adequate numbers of mental health-related facilities and support services and adequate numbers of medical and other professionals trained to provide these services.”²²⁵
- *Accessibility* – services should be available without discrimination of any kind and should be especially available to the most disadvantaged groups. They should also be physically accessible which means that they are within reach of people who need to make use of them. Services should be affordable to all, including to the poor who should not be disproportionately burdened with health expenses as compared to richer households. As part of the accessibility criteria individuals should be entitled to receive information about health issues.
- *Acceptability* – services provided should be in line with professional ethics and be culturally and gender sensitive. They should also respect confidentiality of those concerned.

- *Quality* – services should be of appropriate scientific and medical standards. The staff should be well trained and professional.²²⁶

BiH authorities have to comply with this framework while providing rehabilitation to survivors of rape and other forms of sexual violence. As it will be documented in this part of the report the BiH authorities have failed to provide victims of those crimes with adequate measures of rehabilitation by not making health services, which are necessary to address the impact of sexual violence on women's health, available, accessible, acceptable and of good quality.

6.3.1 AVAILABILITY

The psychological care system in BiH is organized so that on average there is one Centre for Mental Health for each 40,000-50,000 people. In practice in municipalities which have a lower number of inhabitants psychological care services are not available.

For example, Amnesty International was informed by a local NGO Viktorija 99, that in the municipality of Jajce in the FBiH, with some 45,000 inhabitants, only one psychologist is employed and one psychiatrist visits the town once every two weeks for one day.²²⁷ During each visit the psychiatrist is not able to see more than 10 patients. Since the end of the war almost 70 people have committed suicide in the municipality; about 60 per cent of suicides were women.²²⁸ The high number of suicides indicates that there is insufficient psychological care in the Jajce municipality. This poses problems especially for victims of sexual violence who live in this community, as they often require such services.

Since the end of the war, Forum Žena, a women's NGO from the municipality of Bratunac in RS have been campaigning for the establishment of a Centre for Mental Health in their town. The municipality has 30,000 inhabitants. According to the information available to the NGO, since the end of the war around 8,000 internally displaced persons and refugees have come back to the town and surrounding villages. Of these more than 1,000 are single mothers many of whom lost family members during the war. Despite the sizable returnee population, many of whom were traumatized during the war, the municipal authorities do not employ a psychologist or a psychiatrist. In the municipality of Srebrenica, which borders Bratunac and where the genocide against Bosniak (Bosnian Muslim) population was committed during the war, the situation is exactly the same with no state provision of psychological services to its inhabitants. The only services available to those living in the municipalities of Bratunac and Srebrenica are provided by an NGO Koridor from Sarajevo which pays for psychiatrist visits twice a month. The psychiatrist is however able to see only 15 patients on average per visit.²²⁹

Survivors of rape and other war crimes of sexual violence have special psychological needs related to the syndromes they suffer as result of their experience. Some of them in order to be able to rebuild their lives need psychological therapy. Depending on individual case some of them have to attend psychiatric treatment and receive medication.²³⁰

As a result of rape and other war related human rights abuses they experienced many survivors have developed post-traumatic stress disorder (PTSD) and other psychological syndromes. The psychological effects of their trauma include the feeling of insecurity, shame, self-blame, depression, fragmented memories, lack of concentration, nightmares, flashbacks, anxiety or mistrust of other people.

Sanja described the way she felt by saying "at New Year's Eve when they let off fireworks I always feel like if I was in the concentration camp again and it feels like if they were shooting people down."²³¹

The physical symptoms suffered by the survivors include headaches, sexual dysfunction, sleeplessness, gynaecological problems such as vaginal bleedings, fibroids, chronic pelvic pain and other physical pain. Without psychological support and adequate medical care women survivors of rape may not be able to resume normal life. Speaking about her psychological conditions Emina explained to Amnesty International "I am not able to work. I am not able to concentrate apart from chopping wood and digging."²³²

According to a representative of an NGO providing psychological services to victims of torture, including rape, almost 90 per cent of rape victims do not receive any kind of treatment.²³³ This puts their health at risk and violates their right to the highest attainable standard of physical and mental health.

Amnesty International is concerned that successive governments of BiH have neglected the needs of survivors of war crimes of sexual violence by not providing them with adequate psychological and medical services. In the absence of state services in many places in BiH local NGOs have been the only institutions offering this kind of support to victims.

The BiH authorities have not only neglected their direct support to survivors directly but they have also failed to provide resources to the NGOs providing such services. Amnesty International was told that one of the NGOs which provides services across the whole territory of BiH receives only 2 per cent of its budget from the BiH authorities. The remaining 98 per cent comes from international donors. In the face of the international economic crisis the NGO had to limit the number of patients in 2008, as it received less international funding than in the previous years. The representatives of the NGO were not sure whether they would be able to provide services in the upcoming year due to the lack of resources.²³⁴ According to their estimates a one year therapy for one person costs around € 2200.²³⁵

Amnesty International talked to many survivors of rape who have been attending therapy organized by NGOs. They all emphasized how their lives had changed since they started receiving this kind of assistance. Aida told Amnesty International that "we were all in some kind of dark tunnel with no exit until we got here."²³⁶ Sanja added: "when I do not come here I feel like if I've lost something. Here I can cry, scream and talk when I need to."²³⁷

6.3.2 ACCESSIBILITY

Many survivors of war crimes of sexual violence are not able to access health services, including psychological and mental care services. Many of them live in remote areas where the transport is extremely poor with often one bus a day to the main town. In addition to that they often cannot afford to pay for the fare.

According to a report by a coalition of BiH NGOs, in 2008 in RS more than 19 per cent of the inhabitants did not have health insurance and were not able to access to health services. In the FBiH the situation in 2007 differed between different cantons and on average 16.35 per cent of the inhabitants were excluded from the health care system.²³⁸ Women as one of the most vulnerable groups were disproportionately affected.

Maja, who lives with her parents on social benefits amounting to KM 50 (€ 25) per month for all three of them told Amnesty International that a return bus ticket to the main town costs KM 11 (€ 5.5) and therefore she cannot afford to go there regularly. Apart from that she is not able to buy medication as she has no money. Maja explained to Amnesty International: "I have a doctor's appointment for a check up but I am not able to go. I cannot deal with all my illnesses at the same time. I cannot afford that. I have to deal with the main thing first...I mean what I think is the main thing...But the problem is that in my case everything is main and urgent. I really have no money. Sometimes I am prescribed medicines but I am not able to pay for them. What is the point of going to a doctor if you are not able to buy medicines afterwards? Just an unnecessary hassle..."²³⁹

According to survivors and their associations very few women had sufficient income to afford medicines, even when prescribed by a doctor. Aida, who is one of the few survivors receiving social benefits, said she spent more than KM 140 (€70) out of her monthly income of KM 560 (€280) on her medication.²⁴⁰

Women survivors of rape told Amnesty International that they decided to apply for the status of the civilian victim of war also because they thought that this would enable them to access free health services provided by the state. Many recipients were surprised to discover that it was not the case.

Sanja, who lives in FBiH gave a dramatic example from her own experience when she was initially refused medical treatment. She said: "Even hospitals do not accept us. I got really sick last year. I left my children at home with KM 30 and of course I had to buy all the things for my stay in the hospital. Nobody asked me anything...I needed to have a blood transfusion. They asked me to get it [the blood]. But how could I get the blood? The lady came and said - "You have to get the blood from somewhere or you will need to pay KM 600 (€ 300)." So I told her - "please, madam; my life is at risk, please..."²⁴¹

Following the intervention of a local NGO the treatment was provided but she remained embittered about the situation she had to face. "You know how it feels? - she said. - "You are really not sure how to continue with your life. Maybe the next time will be the last time? You live in fear all the time. You are just waiting..."²⁴²

Other women survivors from FBiH with official civilian victim of war status told Amnesty International that they have been refused medical care on a regular basis as the local medical personnel were not aware that they had any rights related to the status of the civilian victim of war.

Amnesty International calls on the authorities of BiH to make sure that medical and psychological care is available and accessible to women survivors of war crimes of sexual violence. The government needs to take urgent action to increase the availability of facilities and personnel that can provide psychological, psychiatric and other necessary health support services for survivors of rape. The organization urges the authorities to remove financial and other barriers to accessing medical services and medicines, including the non-recognition of their status or unaffordable transportation costs.

6.3.3 ACCEPTABILITY AND QUALITY OF REHABILITATION

In 2006 the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) in its concluding comments on Bosnia and Herzegovina expressed its concern “that there is no coherent strategy to support these women [survivors of rape and other forms of sexual violence] and they have only limited or no access to health insurance and financial benefits, as well as to general health services or specific health services relating to their traumatic experiences.”²⁴³

As it was presented above the BiH authorities have failed in making measures of rehabilitation for survivors of rape and other forms of sexual violence available and accessible.

However, based on the international standards relating to the right of the highest attainable standards of physical and mental health as well as on the UN Basic Principles and concluding comments of the CEDAW the BiH authorities are obliged to make sure that all measures of rehabilitation which are yet to be provided to the survivors of rape and other forms of sexual violence are acceptable and of good quality.

According to the Committee on Economic, Social and Cultural Rights (CESCR) acceptability of health services means that “[a]ll health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned.”²⁴⁴

The CESCR also observed that “health facilities, goods and services must also be scientifically and medically appropriate and of good quality. This requires, inter alia, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment [...]”²⁴⁵In relation to mental health care, the Special Rapporteur on the right to health has stated that “this means that, for example, health professionals should be provided with adequate mental health-care training”.²⁴⁶

CEDAW has also emphasised the state's obligation to ensure “Gender-sensitive training to enable health care workers to detect and manage the health consequences of gender-based violence”.²⁴⁷

The impact of rape and other forms of sexual violence on the survivors may differ depending on the particular circumstances of each case. Different survivors may have different needs and therefore require different support services. This can be only assessed on a case-by-case basis.²⁴⁸ However, an adequate quality of services available to all survivors of rape, even those requiring the most extensive support, should be provided by the BiH authorities.

Amnesty International urges the BiH authorities to ensure that, while developing a strategy to support survivors of rape and other forms of sexual violence as recommended by the CEDAW, special attention is given to make sure that all measures of rehabilitation are in line with the requirement of acceptability and good quality of health services, as defined by the CESCR.

6.4 SATISFACTION AND GUARANTEES OF NON-REPETITION

“You always have the feeling that they are above you all the time, controlling your life. And you?! Who are you?! You do not mean anything at all and you cannot do anything at all.” - Taida, interviewed by Amnesty

International in FBiH in March 2009.

The authorities of BiH have failed to provide victims of war crimes of sexual violence with satisfaction and guarantees of non-repetition. Despite the fact that the war finished 14 years ago the BiH authorities have not at either the state or entity level publicly expressed an apology to women survivors of rape and other war crimes of sexual violence. The BiH authorities have also failed to recognize the rights of the survivors of war crimes of sexual violence by not providing them with measures including restitution, compensation and rehabilitation. By failing to do so, they have failed to recognize them as victims.

Measures of satisfaction could have included recognition of survivors of war crimes of sexual violence as civilian victims of war under relevant laws in both entities.²⁴⁹ For many survivors it could have had a positive symbolic meaning, especially if it would have enabled them to access a set of special rights. However, the number of women survivors of rape and other forms of sexual violence benefiting from such provisions is extremely low compared to the number of women affected. According to information available to Amnesty International, as of December 2008, only 500 women in the FBiH were registered as civilian victims of war.²⁵⁰ Statistics relating to the same category of victims in RS have never been collected. As explained by the RS authorities collecting statistics on the number of victims of sexual violence benefiting from the status of civilian victims of war in the entity would lead to unnecessary differentiation between different categories of victims. They stated that to them all victims were the same and making exceptions for some specific groups might mean discriminating against others.²⁵¹ Amnesty International however believes that collecting statistics on the number of rape survivors benefiting from the status of civilian victims of war should not be perceived as aiming at favoring one group of the victims over another but should rather enable the authorities to address specific support needs that this particular group of survivors has.

In 2006 the UN Committee on Economic, Social and Cultural Rights (CESCR) while commenting on the BiH progress in the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) expressed its concerns by saying: “[t]he Committee is gravely concerned about the absence of a coherent strategy to support victims of sexual violence suffered during the armed conflict of 1992-1995 and that Entity laws pertaining to civilian war victims are gender-insensitive and provide inadequate social protection for victims of sexual violence.”²⁵²

It also recommended that “the State party ensure that victims of sexual violence suffered during the armed conflict of 1992-1995 obtain the status of civilian war victims, to devise and implement a coherent strategy at State level to protect the economic, social and cultural rights of victims of sexual violence and their family members, and to ensure the participation of victims of sexual violence in any decision-making processes affecting them.”²⁵³

Amnesty International considers that the authorities of BiH have failed to implement these recommendations of the Committee. Development and implementation of such a strategy could be a positive step towards providing survivors with measures of satisfaction. As part of

it the authorities would have to conduct an analysis of the problem of rape and other crimes of sexual violence committed during the war in BiH. They would need to collect statistics on the number of women in the need of assistance as well as on their support needs.

Other measures of satisfaction could include non-judicial mechanisms aiming at establishing facts about the occurrence of rape and other forms of sexual violence, such as truth commissions. Although Amnesty International has no position on the necessity of establishing a truth commission in BiH, the organization is of the view that this or other mechanisms of establishing facts on the causes, scale and impact of rape and other war crimes of sexual violence should be considered by the BiH authorities. The need for such a mechanism, its possible form and, its implementation should be consulted on with the public, including with survivors of rape and sexual violence and associations representing them.

Amnesty International is also aware of the Transitional Justice project aiming to address some of these issues which is conducted by the UNDP in partnership with the BiH authorities. In 2008 and 2009 nation-wide consultations with BiH NGOs were conducted. It is expected that as an outcome of this project a transitional justice strategy will be developed.²⁵⁴ This could be a positive step in providing victims of war crimes, including rape with satisfaction.

Many victims interviewed by Amnesty International pointed out that the public perception of rape was preventing them from rebuilding their lives and integrating with the society.

Selma complained to Amnesty International saying: "I do not have any rights. Wherever I go people perceive me – I am sorry to use this word – as a whore. But did I choose this life?"²⁵⁵

War crimes of sexual violence are still a sensitive issue in BiH. There is little if any public discussion about these crimes despite the large scale of the problem and the number of people affected. Many survivors feel stigmatized and excluded from society in BiH, and many continue to live with their trauma in silence as they are afraid to speak out about what happened to them. Amnesty International talked to several women who had been divorced by their husbands when they disclosed to them that they had been raped during the war.

For example Aida told Amnesty International: "My marriage is over. I do not have a marriage. My husband lives abroad. Do you know what he told me? He said, "Why did not you escape together with my brothers? It is all your fault." And fine, I say! You do not want me – you do not have to."²⁵⁶

Others, like Sabiha, were subjected to physical and psychological abuse by their husbands who blamed them for what had happened to them during the war. She told Amnesty International: "This is worse than the life in the concentration camp...Now it is been going on for 12 years."²⁵⁷

Amnesty International notes that the authorities of BiH as state party of the Convention on the Elimination of All Forms of Discrimination against Women are obliged to take measures to challenge the negative stereotyping and stigmatization of women survivors of rape. Article 2(f) of the Convention explicitly defines the duty "[t]o take all appropriate measures,

including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women [...].”

7. CONCLUSIONS AND RECOMMENDATIONS

In this report Amnesty International has documented how the successive governments of Bosnia and Herzegovina (BiH) have failed to provide thousands of women who were raped during the 1992-1995 with access to justice and reparation.

The organization suggests a set of recommendations which are outlined below and which, if implemented, could enable women survivors of war crimes of sexual violence to access justice and reparations for the human rights violations they experienced during the war.

Access to justice

Amnesty International is concerned that the BiH authorities have investigated and prosecuted only a very limited number of cases of war crimes of sexual violence. Their failure has created impunity for those responsible and has left thousands of survivors with no access to justice and remedy.

There exist several serious obstacles to an effective prosecution of cases including inadequate legal framework both at the state and entity level. This creates a situation in which cases, even if prosecuted, are adjudicated based on the legal framework which is not in line with the current international standards for prosecution of war crimes.

The BiH authorities at both state and entity level have also failed to provide survivors and witnesses with meaningful measures of support and protection. This results in the survivors' continuous fears for their safety, which discourages them from appearing in the courtroom and testifying. The lack of adequate psychological support for witnesses may cause their re-traumatization during participation in the proceedings.

Amnesty International is also concerned that unless sufficient resources are allocated the efforts to implement the State Strategy for the Work on War Crimes Cases are doomed to failure. This could result in prosecution of war crimes cases, including those related to sexual violence, in the entity courts which due to the lack of capacity and an inadequate legal framework are not able to prosecute cases up to the highest fair trial standards.

In order to address the concerns related to the BiH justice system Amnesty International makes the following set of recommendations.

Amnesty International calls on the BiH Council of Ministers to:

- Ensure that survivors of war crimes of sexual violence have access to justice, and that all cases of rape and other war crimes of sexual violence are promptly, independently, impartially

and effectively investigated and prosecuted in accordance with international fair trial standards;

- Establish a state commission tasked with collecting information on the scale of rape and other crimes of sexual violence during the war; identifying the support needs of the survivors; and identifying the obstacles to successful prosecution of rape and other war crimes of sexual violence;
- Amend the BiH Criminal Code to include a definition of sexual violence in line with international standards and jurisprudence related to prosecution of war crimes of sexual violence by removing the condition of “force or threat of immediate attack” from the present definition of sexual violence;
- Develop programmes and allocate adequate resources for long term protection of witnesses who testify in war crimes proceedings before the War Crimes Chamber (WCC) of the State Court. Such programmes should include the possibility of relocating witnesses within the country or internationally;
- Develop programmes and allocate resources for long term witness support. Such programmes should include preparation of potential witnesses at least several months before the start of the trial and should be devised and implemented in close cooperation with NGOs providing support to the survivors of war crimes of sexual violence. They should include measures of adequate psychological, economic and social support;
- Together with the entity authorities find a solution to the problem of non-application of the BiH Criminal Code by the entity courts by ensuring that all cases of war crimes in BiH are adjudicated based on the BiH Criminal Code;
- Together with the entity authorities allocate financial resources to increase the capacity of the entity courts to deal with war crimes cases in view of the implementation of the State Strategy for the Work on War Crimes Cases. This should include ensuring the existence of the highest standards of witness protection and support, adequate staffing of the entity courts and prosecutorial offices, and adequate training both for the justice system officials as well as for other staff working with survivors and witnesses.

Amnesty International calls on the State Investigation and Protection Agency (SIPA) to:

- Cooperate with NGOs while contacting survivors of sexual violence in order to assess survivors' support needs and to make sure that their participation in criminal proceedings does not violate their right to privacy and does not expose them to re-traumatization.

Amnesty International calls on the State Court of BiH to:

- Conduct a meaningful assessment of the needs of witnesses in war crimes cases and to provide them with measures of adequate economic, psychological and social support. This should also include safe transportation to and from the court. The measures of support required should be evaluated after the completion of the trial and if necessary the witnesses should be referred to other institutions providing long term economic, psychological and

social support;

- Conduct a meaningful assessment of the reasons why witnesses do not wish to testify in war crimes cases and, if not deemed necessary to ensure a fair trial, refrain from imposing fines on the survivors who do not wish to testify in criminal proceedings. While conducting such an assessment the possibility of re-traumatization of potential witnesses should be taken into account in addition to other criteria;
- Interpret the case selection criteria outlined in the State Strategy for the Work on War Crimes Cases as broadly as possible in order to allow for all cases of sexual violence to be tried by the State Court until such time as the entity courts are afforded the resources and capacity to ensure that the cases may be prosecuted to the highest fair trial standards and that an adequate level of witness support and protection is provided;
- Ensure all survivors testifying in war crimes proceedings are meaningfully informed of their right to claim compensation from individual perpetrators in separate civil proceedings.

Amnesty International calls on the Prosecutors at the State Court of BiH to:

- Conduct an assessment of victims' material and non-material damage in order to include compensation claims in the criminal proceedings;
- Before entering plea bargaining agreements with the accused consult victims as to their expected outcome of the trial and, if they wish so, include a compensation claim as part of guilty plea agreements.

Amnesty International calls on the RS and FBiH authorities to:

- Employ in entity courts prosecutors specializing only in war crimes cases;
- Provide entity prosecutors with adequate professional training including in gender-sensitive approach to witnesses, international criminal law, international humanitarian law and human rights. The training should also include development of skills in investigating war crimes;
- Employ specialized investigators to assist prosecutors in the investigation of war crimes cases;
- Allocate more resources to prosecutors' offices in both entities;
- Make sure that an additional vetting process is conducted in police forces and public institutions to remove from posts persons allegedly responsible for involvement in war crimes;
- Create incentives to the entity prosecutors investigating war crimes cases by amending prosecutors' evaluation criteria in a way that prosecution of war crimes is given more value than prosecution of ordinary crime;
- Make sure that witnesses testifying in entity courts receive adequate long term support

which includes measures of psychological, economic and social support;

- Make sure that entity courts are equipped with devices allowing for technical protection of witnesses such as voice and image distortion equipment or video-links.

Reparation

Amnesty International is concerned that the BiH authorities have failed to develop a comprehensive strategy to address the needs of the survivors of war crimes of sexual violence and to provide them with reparation including, restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

The existing legal provisions relating to the status of civilian victims of war, based on which survivors of war crimes of sexual violence may seek compensation and social benefits, are discriminatory, as is their implementation. The legal framework for claiming compensations from individual perpetrators is unreasonably complicated and the BiH authorities have failed to develop a system of free legal aid which would enable survivors to claim compensation in civil proceedings.

The existing programmes of property restitution for refugees and internally displaced persons have failed to take into account the gender needs of the survivors of sexual violence as well as their psychological conditions. As a result all too often survivors were made to return to their pre-war places of residence which in many cases caused their re-traumatization.

Amnesty International is concerned that the BiH authorities have neither provided the survivors with any meaningful measures of employment restitution nor have enabled them to re-integrate them with the labour market as they have not provided any measures of vocational training or other employment programmes.

The organization is particularly concerned at the failure of the BiH authorities to take adequate measures to provide survivors with rehabilitation including the highest attainable standard of mental and physical health. The overwhelming majority of the survivors have no access to any measures of psychological support which results in continuation of their trauma. Health services are not widely available and accessible and in many cases the survivors cannot afford medicines even if they are prescribed by doctor.

In order to address the concerns related to reparations for survivors of war crimes of sexual violence Amnesty International makes the following set of recommendations.

Amnesty International calls on the BiH Council of Ministers to:

- Take immediate measures to develop a state strategy on reparation for victims of war crimes of sexual violence. The strategy should include ensuring restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition to the victims. The strategy should also include provisions guaranteeing, to those who seek it, access to psychological assistance and other support. The strategy should be developed with the involvement of the survivors and NGOs that represent and/or work with them.

- Ensure the provision of free legal aid so that survivors of war crimes of sexual violence as well as other groups of victims receive access to legal services, if they are not able to afford them, and if they wish to claim compensation for the violation of their rights from individual perpetrators in civil proceedings;
- In conjunction with the entity authorities take measures, including the amendment of legislation, to ensure that all civilian victims of war in the country have equal access to social benefits and other measures of social support irrespective of where they live. Such legislation should be adopted on the state level in order to avoid the continuation of the current situation in which there exists discrimination in access to and levels of social benefits depending on the entity;
- While evaluating conditions for the “safe and dignified” return of internally displaced persons take into account the psychological impact of the return on individuals;
- Provide internally displaced persons who are not able to return to their pre-war places of residence with alternative options of resettlement such as social housing or other measures.

Amnesty International calls on the authorities in both entities to:

- Remove discrimination in the level of social benefits available to survivors of war crimes of sexual violence in comparison with war veterans;
- Review the benefits to ensure that they are adequate in amount and duration to ensure an adequate standard of living and access to health care for survivors of sexual violence;
- Develop a system by which persons wishing to apply for the status of civilian victim of war are assisted by a psychologist and social worker in their application process. The role of a psychologist should be to make sure that applicants do not suffer re-traumatization during the application process. The role of a social worker should be to assist survivors by explaining the procedure to them as well as helping them to collect and present the relevant documentation;
- Take measures to raise awareness of the status of civilian victim of war; the possibility for applying for it and the rights deriving from it;
- Collect data on the number of applicants and to analyze reasons why women do not apply for the status of civilian victims of war;
- Allocate adequate resources to NGOs providing psychological support to the survivors of war crimes of sexual violence;
- Evaluate the psychological needs of the population of both entities; establish centres for mental health; and increase the number of personnel that can provide psychological, psychiatric and other necessary health support services in municipalities where they are needed, particularly by survivors of sexual violence, including, as a matter of urgency in Jajce, Bratunac and Srebrenica;

- Develop a system to provide survivors of war crimes of sexual violence who live in remote areas of the country with access to psychological and physical health services;
- Develop a system to provide survivors of war crimes of sexual violence who live in remote areas of the country with access to necessary psychological and physical health services, including medicines.

Amnesty International calls on the FBiH authorities to:

- Implement in full the law on the civilian victims of war in the area of employment by organizing vocational training programmes for the survivors of sexual violence or by providing them with other measures of re-integration with the labour market;
- Make sure that the process of applying for the status of the civilian victim of war is transparent and independent and that the institutions conducting it, including NGOs, are well equipped to conduct interviews with the survivors. This should include setting certain standards such as the assistance of a psychologist in the process and adequate facilities guaranteeing privacy;
- Make sure that a fair and transparent appeal process exists for the survivors who have been denied a confirmation of their status by the NGO which conducts an initial verification of civilian victims of war;
- Make sure that the decisions on the status of the civilian victim of war are not temporary.

Amnesty International calls on the RS authorities to:

- Amend the law on the civilian victims of war by creating a separate category of survivors of war crimes of sexual violence which does not have to prove the criteria of 60 per cent bodily damage; and include trauma and other psychological effects on the survivors as one of the criteria in the application process;
- Amend the law on the civilian victims of war by removing the discriminatory deadline for application for the status of the civilian victim of war, and re-open the procedure for applying;
- Abolish the use of the military rulebook in the assessment of bodily damage of the applicants for the status of civilian victims of war;

In addition to the recommendations made to the BiH authorities Amnesty International calls on the international community to undertake the following measures in the area of access to justice and reparation.

The organization calls on the international community to:

- Continue their financial support for the State Court of BiH;

- Allocate additional resources to the entity courts in BiH in order to increase their capacity to deal with war crimes cases including by offering adequate level of witness support and protection;
- Support the BiH authorities with financial resources and expertise to develop a state strategy on reparation for victims of war crimes of sexual violence.

ENDNOTES

- ¹ All names of the survivors quoted in the report have been changed upon their request.
- ² Amnesty International, *Bosnia-Herzegovina: "Rape and Sexual Abuse by Armed Forces"*. (Index: EUR 63/01/93).
- ³ The term "war crimes" will be used in this report to refer to war crimes, crimes against humanity and genocide.
- ⁴ Those interviewed were: Medica Zenica – Nurka Babović; Udruženje Žena Viktoria 99 - Jajce - Izeta Zahić and Senka Zulum; Ministry of Justice (Republika Srpska) - Minister Džerard Selman; Ministry of Labour and Veterans (RS) - Assistant Minister for Veterans and Protection Radomir Graonić; Republika Srpska Chief Prosecutor's Office – Deputy Chief Prosecutor - Branka Milošević, Special War Crimes Prosecutor – Branko Mitrović; Udruženje Izvor – Prijedor – Edin Ramulić and Fatima Fazlić; Vive Žene – Tuzla – Jasna Zečević; Forum Žena Bratunac – Stanojka Tešić; EU Special Representative – Legal Adviser on Rule of Law - Lucio Valerio Sarandrea; Research and Documentation Centre – Mirsad Tokača; State Court of Bosnia and Herzegovina – Meddžida Kreso - President of the Court and Berina Smajić – Witness Support Programme; Ministry of Justice (FBiH) – Feliks Vidović - Minister and his assistants; OSCE Mission to Bosnia and Herzegovina - War Crimes Unit - Human Rights Department – Pipina Katsaris - Head of the Rule 11bis Monitoring Section; Udruženje Žena Ženama – Sarajevo – Nuna Zvizdić; State Court of BiH - State Prosecutor's Office – David Schwendimen – Special War Crimes Prosecutor; State Ministry of Justice – Bariša Čolak – Minister; State Agency for Gender Equality - Samra Filipović-Hadžiabdić – Director and her assistants; Žene Žrtve Rata – Bakira Hasečić.
- ⁵ The consultation meeting took place in Sarajevo on 26 and 27 March 2009. The following organizations participated: Udruženje Izvor – Prijedor; Infoteka – Zenica; Centar za pravnu pomoć ženama – Zenica; Fondacija CURE – Sarajevo; Žene ženama – Sarajevo; Viktorija 99 – Jajce; Žena BiH – Mostar; Medica Zenica; Care NWB International – Sarajevo; Research and Documentation Centre – Sarajevo; Vive Zene – Tuzla. The interviews with the survivors took place in March 2009 in various locations in the Federation of Bosnia and Herzegovina and in Republika Srpska. Following requests by the interviewees Amnesty International has agreed not to disclose the locations where interviews were conducted.
- ⁶ Those interviewed were: the Ministry of Labour and Social Policy - Esmā Palić; UNDP – Transitional Justice Project - John Furnari, Chief Technical Advisor; Centre for Victims of Torture Sarajevo – Lejla Čaković; Savez Udruženja Logoraša, Kantona Sarajevo - Alisa Muratčauš.
- ⁷ S. Sivakumaran, "Male/Male Rape and the "Taint" of Homosexuality", *Human Rights Quarterly* 27 (2005), pp. 1274-1306; British Medical Journal, "Sexual torture of men in war-time Croatia was common", 29 May 2004; BMJ 2004, pp. 328:1280; P. Oosterhoff, P. Zwanikken, E. Ketting, "Sexual torture of Men in Croatia and Other Conflict Situations: An Open Secret" *Reproductive Health Matters*, 2004; 12(23),pp. 68-77.
- ⁸ See for example: Amnesty International: *Bosnia-Herzegovina: "Gross Abuses of Human Rights"*

(Index: EUR 63/01/92), Amnesty International, *Bosnia-Herzegovina: "Rape and Sexual Abuse by Armed Forces"* (Index: EUR 63/01/93) and also Amnesty International, *Yugoslavia: "Torture and deliberate and arbitrary killings in war zones"* (Index: EUR 48/26/91); Amnesty International, *Yugoslavia: "Further reports of torture and deliberate and arbitrary killings in war zones"* (Index: EUR 48/13/92).

⁹ Research and Documentation Centre collected the names and other personal information of 97,207 killed and missing people in the territory of Bosnia and Herzegovina. Information available at: http://idc.org.ba/presentation/research_results.htm; "UNHCR, EC and OSCE urge full implementation of Sarajevo Declaration. UNHCR News Story", 19 September 2006. <http://www.unhcr.org/news/NEWS/45101d482.html>; International Commission on Missing Persons. Bosnia and Herzegovina. Available at: <http://www.ic-mp.org/icmp-worldwide/southeast-europe/bosnia-and-herzegovina/> accessed 11 May 2009.

¹⁰ Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide. *Bosnia and Herzegovina v. Serbia and Montenegro*. International Court of Justice. Judgment of 26 February 2007, p. 108 para. 297.

¹¹ Report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to Commission resolution 1992/S-1/1 of 14 August 1992. Commission on Human Rights. Forty-ninth session. 10 February 1993. E/CN.4/1993/50. Annex II, p. 63. para.6. (Mazowiecki's Report, 10 February 1993)

¹² Mazowiecki's Report, 10 February 1993 and Amnesty International, *Bosnia-Herzegovina: "Rape and Sexual Abuse by Armed Forces"*. (Index: EUR 63/01/93), p. 4.

¹³ Amnesty International, *Bosnia-Herzegovina: "Rape and Sexual Abuse by Armed Forces"*. (Index: EUR 63/01/93), p. 4.

¹⁴ S. Vranic, "Breaking the Wall of Silence. The Voices of Raped in Bosnia", *Antibarbarus*, Zagreb 1996, p.239.

¹⁵ Parliamentary Assembly of the Council of Europe. Resolution 1670 (2009). Sexual violence against women in armed conflict. Adopted on 29 May 2009, para. 6.

¹⁶ For reasons for this under-reporting see: The UN Secretary-General's In-depth study on violence against women, paragraph 277, UN Doc A/61/122/Add.1 (UN SG study on violence against women)

¹⁷ UN SG study on violence against women, p. 240.

¹⁸ The General Framework Agreement for Peace in Bosnia and Herzegovina. Available at: http://www.ohr.int/dpa/default.asp?content_id=379. Accessed on 11 May 2009.

¹⁹ The Brčko District will not be discussed in-depth in this report due to its relatively small size. According to the 1991 census it has only 87,000 inhabitants. In 2008 in this jurisdiction there was only 1 case pending against 2 accused which was related to war crimes.

²⁰ These are: the jurisdiction of the State Court – state level; 10 cantonal jurisdictions in the FBiH; jurisdiction of RS; jurisdiction of the Brcko District.

²¹ Gender-specific crimes against women in armed conflicts have been recognized in a wide range of international laws and standards. This includes the General Recommendation No. 19 of the Committee on the Elimination of Discrimination against Women (CEDAW) which observed that "*wars, armed conflicts and the occupation of territories often lead to increased prostitution, trafficking in women and*

sexual assault of women, which require specific protective and punitive measures". CEDAW. General Recommendation No. 19. A/47/38. 29 January 1992. para. 16 and also its Resolution 1325, the Security Council expressed "concern that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict, including as refugees and internally displaced persons, and increasingly are targeted by combatants and armed elements," the Security Council "[recognized] the consequent impact this has on durable peace and reconciliation." Security Council Resolution 1325, UN Doc S/RES/1325, 31 October 2000. For a complete analysis of the legal standards relating to violence against women in armed conflict, see: Amnesty International, *Violence against women in armed conflict "Making rights a reality"*, (Index: ACT 77/050/2004).

²² For background on the problem of rape in armed conflicts and the international response to it please see: Christine Chinkin, "Rape and Sexual Abuse of Women in International Law", 5 *European Journal of International Law*. (1994) or T. Meron, "Rape as a Crime under International Humanitarian Law" 87 *American Journal of International Law*. (1993).

²³ J. Mertus and O. Hocevar Van Wely. "Women's Participation in the International Criminal Tribunal for the former Yugoslavia (ICTY): Transitional Justice for Bosnia and Herzegovina". *Women Waging Peace Policy Commission*. July 2004, p. 5. See also: Amnesty International. *Bosnia-Herzegovina: "Rape and Sexual Abuse by Armed Forces"* (Index: EUR 63/01/93).

²⁴ The Vienna Declaration and Programme of Action. Adopted by the World Conference on Human Rights, Vienna, June 1993. A/CONF.157/24.

²⁵ Statute of the International Criminal Tribunal for the former Yugoslavia. Article 5(g) and the Statute of the International Criminal Tribunal for Rwanda. Article 3(9) and Article 4(e)

²⁶ Ch. Campbell, "The Gender of Transitional Justice: Law, Sexual Violence and the International Criminal Tribunal for the Former Yugoslavia", *The International Journal of Transitional Justice*, Vol.1 (2007), pp. 414-415.

²⁷ Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Trial Chamber Judgment, 2 September 1998. para. 731. (Prosecutor v. Akayesu).

²⁸ Prosecutor v. Akayesu, paras. 597 and 687.

²⁹ Prosecutor v. Akayesu, para. 688.

³⁰ Prosecutor v. Mucić, Delić, Landžo and Delalić (IT-96-21).

³¹ Prosecutor v. Furundžija (IT-95-17/1).

³² Prosecutor v. Kunarac et al. (IT-96-23, IT-96-23/1).

³³ Prosecutor v. Akayesu, Trial Chamber Judgment. 22 February 2001, para. 460.

³⁴ Prosecutor v. Akayesu, Trial Chamber Judgment, para. 460.

³⁵ Prosecutor v. Kunarac et al. (IT-96-23, IT-96-23/1). Appeals Chamber Judgment. 12 June 2002, para.129. (Prosecutor v. Kunarac).

³⁶ UN Special Rapporteur on Contemporary Forms of Slavery. *Systematic rape, sexual slavery and slavery-like practices during armed conflict*. 22 June 1998, para. 24.

³⁷ UN Special Rapporteur on Contemporary Forms of Slavery. *Systematic rape, sexual slavery and*

slavery-like practices during armed conflict. 22 June 1998, para. 25.

³⁸ International Criminal Court. Elements of Crimes. Article 7 (1) (g)-1. Crime against humanity of rape. 1. (ICC Elements of Crime).

³⁹ ICC Elements of Crime, Crime against humanity of rape. 2.

⁴⁰ ICC Elements of Crime, Crime against humanity of rape. 3&4.

⁴¹ ICC Elements of Crime, Article 8 (2) (b) (xxii)-1. War crime of rape. 3&4.

⁴² Security Council Resolution 1325/00. Adopted on 31 October 2000. para. 11 and the Security Council Resolution 1820/08. Adopted on 19 June 2008, para. 4.

⁴³ Parliamentary Assembly of the Council of Europe. Resolution 1670 (2009). Sexual violence against women in armed conflict. Adopted on 29 May 2009, para. 10.5.

⁴⁴ Mazowiecki's Report, 10 February 1993, Annex II: Report of the team of experts on their mission to investigate allegations of rape in the territory of the former Yugoslavia from 12 to 23 January 1993, p.74. para 72.

⁴⁵ Mazowiecki's Report, 10 February 1993, Annex II, pp. 63-75.

⁴⁶ UN Security Council Resolution 808 (1993). Adopted by the Security Council at its 3175th meeting, on 22 February 1993 (UN Security Council Resolution 808 (1993)) and UN Security Council Resolution 827 (1993). Adopted by the Security Council at its 3217th meeting, on 25 May 1993. (UN Security Council Resolution 827 (1993))

⁴⁷ UN Security Council Resolution 808 (1993).

⁴⁸ International Criminal Tribunal for the former Yugoslavia. Rules of Evidence and Procedure. Rule 34 (b).

⁴⁹ L. King, K. and M. Greening. "Gender Justice or Just Gender? The Role of Gender in Sexual Assault Decisions at the International Criminal Tribunal for the Former Yugoslavia", *Social Science Quarterly*, Volume 88, Number 5, December 2007, p. 1052.

⁵⁰ Ratko Mladić was initially indicted on 25 July 1995. The indictment has since then been amended twice; the last time on 8 November 2002. He is charged with genocide (including the killing of at least 7,000 men and boys in Srebrenica) and crimes against humanity (including sexual violence) committed in Bosnia and Herzegovina. Goran Hadzic was indicted on 4 June 2004 on charges of crimes against humanity against non-Serb population in the Republika Srpska Krajina.

⁵¹ The cases related to war crimes of sexual violence were the following: Tadic (IT-94-1); Nikolic (IT-94-2); Dosen, Kolundzija and Sikirica (IT-95-8); Todorovic (IT-95-9/1); Simic (IT-95-9/2); Cesic (IT-95-10/1); Rajic (IT-95-12); Bralo (IT-95-17); Furundzija (IT-95-17/1); Delalic, Delic, Mucic, and Landzo (IT-96-21); Kovac, Kunarac, and Vukovic (IT-96-23, IT-96-23/1); Stakic (IT-97-24); Kos, Kvočka, Prcac, Radic, and Zigic (IT-98-30/1); Brdanin (IT-99-36); Plavsic (IT-00-39 & 40/1); Krajisnik (IT-00-39); Banovic (IT-02-65/1); Zelenovic (IT-96-23/2).

⁵² Prosecutor v. Delalić, Delić, Mučić and Landžo (IT-96-21). Known also as the *Čelebići* case.

⁵³ Prosecutor v. Furundžija, (IT-95-17/1). 184-186. Known also as the Lašva Valley case.

⁵⁴ Prosecutor v. Kunarac et al. (IT-96-23, IT-96-23/1). Known also as the Foča case.

⁵⁵ Please see chapter 2 for the discussion on the issue of consent and “*coercive circumstances*”.

⁵⁶ Kate Fitzgerald identified four areas in which improvement were necessary for successful international prosecution of war crimes of sexual violence. Those were: “*limits on evidence able to be led in cases of sexual assault, protection for victims and witnesses, collection of evidence and judicial education.*” K. Fitzgerald, “Problems of Prosecution and Adjudication of Rape and Other Sexual Assaults under International Law”. 8 *European Journal of International Law*. 1997, p. 638.

⁵⁷ Prosecutor v. Milan Lukić and Sredoje Lukić (IT-98-32/1).

⁵⁸ Prosecution motion seeking leave to amend the second amended indictment, 16 June 2008, para. 14: “[t]he Prosecutor exercised her discretion not to seek and amend on the indictment prior to 15 November 2007, in part, based on her belief that amending the indictment to include new charges of sex crimes would lengthen the Prosecution’s case. She had taken the position that fulfilling her obligations to conclude the work of the Prosecutor in the time frame mandated by the United Nations Security Council did not permit an amendment to add sex crimes charges which she believed would add to the length of the trial.”

⁵⁹ *Decision on prosecution motion seeking to leave to amend the second amended indictment and on prosecution motion to include UN Security Council Resolution 1820 (2008) as additional supporting material to proposed third amended indictment as well as on Milan Lukic's request for reconsideration or certification of the Pretrial Judge's order of 19 June 2008.* IT-98-32/I-PT. 8 July 2008.

⁶⁰ *Udruženje "Žena-žrtva rata": Ko je sakrio naše izjave?* Sarajevo-x.com, 18 July 2008. Available at: <http://www.sarajevo-x.com/clanak/080718067> Accessed 13 April 2009.

⁶¹ Muslim Women Protest Change to Lukic Indictment, Institute for War and Peace Reporting. ICTY - Tribunal Update, 06 October 2006. Available at: http://www.iwpr.net/?p=tri&s=f&o=324400&apc_state=henh%0D%0D. Accessed on 10 June 2009. Amnesty International, *Bosnia and Herzegovina: “No Justice for Rape Victims”*, Press Release. 21 July 2009.

⁶² International Women’s Human Rights Law Clinic (IWHR) at CUNY Law School in New York City, *Organizations Call Upon ICTY to Prosecute Radovan Karadzic for Rape and Sexual Violence*. Press Release, August 2008. Available at: http://www.womensrightscoalition.org/site/advocacyDossiers/formerYugoslavia/karadzic/karadzic-IWHR-press_release8-25-08_FINAL.doc

See also: Medica Mondiale, *Online protest campaign: Rape has to be included in Karadžic-indictment*. Available at: <http://www.humanistischvredesberaad.nl/Bericht%20van%20Vrouwen%20voor%20vrede.pdf>

⁶³ Amnesty International, *Appeal to the United Nations Security Council to ensure that the International Criminal Tribunal for the former Yugoslavia fulfils its mandate*. Public Statement. 11 December 2006. Available at: <http://www.amnesty.org/fr/library/asset/EUR05/006/2006/fr/01a0a560-d3cb-11dd-8743-d305bea2b2c7/eur050062006en.pdf> and Amnesty International calls for an urgent review of the completion strategies of the International Criminal Tribunals for the former Yugoslavia and Rwanda. Public Statement. 9 December 2008. Available at: <http://www.amnesty.org/en/library/asset/IOR53/006/2008/en/c1dd8565-c789-11dd-ac96-b9013ebbf4b/ior530062008en.pdf>

- ⁶⁴ Letter dated 2 November 2000 from the Secretary-General addressed to the President of the Security Council, S/2000/1063, 3 November 2000.
- ⁶⁵ International Criminal Tribunal for the former Yugoslavia. Rules of Evidence and Procedure. Rule 34.
- ⁶⁶ Amnesty International consultation meeting with BiH NGOs, Sarajevo, 27 March 2009 and interviews with survivors in various locations, March 2009.
- ⁶⁷ Amnesty International interview with an employee of Medica Zenica, Zenica, 9 December 2008.
- ⁶⁸ Amnesty International interview with the director of Vive Žene, Tuzla, 12 December 2008.
- ⁶⁹ International Criminal Tribunal for the former Yugoslavia. Rules of Evidence and Procedure. Rule 106.
- ⁷⁰ Amnesty International interview with an employee of Medica Zenica. Zenica, 09 December 2008.
- ⁷¹ A. Osborn, Mass Rape Ruled a War Crime. *The Guardian*, 23 February 2001. Available at: <http://www.guardian.co.uk/world/2001/feb/23/warcrimes>
- ⁷² Prosecutor v. Miroslav Kvočka, Mladjo Radic, Zoran Zigic and Dragoljub Prcac. IT-98-30/1-A. Appeals Judgment. 28 February 2005. For the reactions to the judgment see: Islam On-line, *Bosnian Rape Victim Protests Lightness of War Crimes Sentences*. Available at: <http://www.islamonline.net/english/News/2001-11/04/article7.shtml>
- ⁷³ Konsultacije o tranzicijskoj pravdi. 4-6 Juna 2008. Izvjestaj. 1.1 Tema: Znacaj sporazuma o priznanju krivnje u procesuiranju ratnih zlocina. United Nations Development Programme.
- ⁷⁴ Statute of the International Criminal Tribunal for the former Yugoslavia. Article 7.
- ⁷⁵ Several cases have been pending in the USA, Germany, Norway and other countries. For the analysis of cases prosecuted in Germany please refer to R. Rissing-van Saan, "The German Federal Supreme Court and the Prosecution of International Crimes Committed in the Former Yugoslavia", *Journal of International Criminal Justice*, 3 (2005), pp. 381-399.
- ⁷⁶ Bosnia and Herzegovina. 2008 Progress Report. European Commission. 05 November 2008, p. 13.
- ⁷⁷ See: B. Ivanisevic, "The War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court", International Centre for Transitional Justice. 2008, p. 9. The author presents different estimates ranging between 6,000 and 16,000.
- ⁷⁸ Amnesty International interview with the RS Minister of Justice, Banja Luka, 10 December 2008 and the FBiH Minister of Justice, Sarajevo, 15 December 2008.
- ⁷⁹ Law on the Court of Bosnia and Herzegovina, "Official Gazette of Bosnia and Herzegovina", 29/00, 16/02, 24/02, 3/03, 37/03, 42/03, 4/04, 9/04, 35/04, 61/04, 32/07.
- ⁸⁰ Law on Prosecutor's Office of Bosnia and Herzegovina, "Official Gazette of Bosnia and Herzegovina", 24/02, 3/03, 37/03, 42/03, 9/04, 35/04, 61/04.
- ⁸¹ D. Tolbertand A. Kontić. "Final Report of the International Criminal Law Services (ICLS) Experts on the Sustainable Transition of the Registry and International Donor Support to the Court of Bosnia and Herzegovina and the Prosecutor's Office of Bosnia and Herzegovina in 2009", International Criminal Law Services Foundation. 15 December 2008, p. 53.

⁸² Bosnian Muslims (Bosniaks), Croats and Serbs are the three "constitutive nations" of Bosnia and Herzegovina. The category "others" refers to all other citizens of BiH who do not fall into the category of any of the constitutive nations. Many of them are people who in the 1991 census identified themselves as Yugoslav. Other groups belonging to this category are Roma, Jews and naturalized foreigners.

⁸³ *Država ne pokazuje interes za jaganje Suda BiH*. <http://www.sarajevo-x.com/clanak/090416056>

⁸⁴ Statistics based on the information available on the website of the State Court:
<http://www.sudbih.gov.ba>

⁸⁵ Criminal Code of Bosnia and Herzegovina. "Official Gazette of Bosnia and Herzegovina" No. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07. Article 172 (1) (g). (BiH Criminal Code).

⁸⁶ BiH Criminal Code, Article 172 (1).

⁸⁷ Prosecutor v. Kunarac Appeals Chamber Judgment. 12 June 2002. para.129.

⁸⁸ See the discussion about the definition of rape, "coercive circumstance" and the issue of consent in Chapter 2.

⁸⁹ Prosecutor v. Akayesu, Trial Chamber Judgment, para. 688.

⁹⁰ *Prosecutor v. Delalic, Delic, Mucic and Landzo*. IT-96-21. Trial Chamber Judgment, 16 November 1998. para. 478-479.

⁹¹ The cases were against the following accused: Veiz Bjelic (X-KR-07/430-1); Damjanovic Dragan. (X-KRZ-05/51); Jankovic Gojko (X-KRZ-05/161); Lelek Zeljko (X-KRZ-06-202); Mejakic and others (X-KR-06/200); Palija Jadranko (X-KRZ-06/290); Samadzic Nedo (X-KRZ-05/49); Simsic Boban (X-KRZ-05/04); Stankovic Radovan (X-KRZ-05/70); Tanaskovic Nenad (X-KRZ-05/165); Vukovic Radmilo (X-KRZ-06/217); Vukovic Ranko and Vukovic Rajko (X-KRZ-07/405).

⁹² Those acquitted were: Vukovic Radmilo (X-KRZ-06/217); Vukovic Ranko and Vukovic Rajko (X-KRZ-07/405).

⁹³ Veiz Bjelic (X-KR-07/430-1).

⁹⁴ The lowest sentence was adjudicated in the case of Veiz Bjelic (X-KR-07/430-1) which finished with a guilty plea agreement. The highest sentence was imposed in the case of Jankovic Gojko (X-KRZ-05/161).

⁹⁵ For example Janković Gojko (X-KRZ-05/161) and Stanković Radovan (X-KRZ-05/70).

⁹⁶ For example Lelek Željko (X-KRZ-06-202); Samadžić Neđo (X-KRZ-05/49); Šimšić Boban (X-KRZ-05/04).

⁹⁷ Janković Gojko (X-KRZ-05/161).

⁹⁸ Samadžić Neđo (X-KRZ-05/49). Trial Chamber Verdict

⁹⁹ Samadžić Neđo (X-KRZ-05/49). Appeal Verdict. p. 18.

¹⁰⁰ Samadžić Neđo (X-KRZ-05/49). Appeal Verdict. p. 18.

¹⁰¹ In the *Akayesu* case, the Trial Chamber's definition focused on whether the act was "committed on a person under circumstances which are coercive." (para 598). Recognizing that rape is used for such purposes as "intimidation, degradation, humiliation, discrimination, punishment, control or destruction

of a person" (para 597). It noted "coercive circumstances need not be evidenced by a show of physical force. Threats, intimidation, extortion and other forms of duress which prey on fear or desperation may constitute coercion, and coercion may be inherent in certain circumstances." (para 688). *Prosecutor v. Akayesu* (Case No. ICTR-9604-T), Trial Judgment, 2 September 1998.

¹⁰² Amnesty International, *Bosnia-Herzegovina: "Shelving Justice - War Crimes Prosecutions in Paralysis"* (Index: EUR 63/018/2003), pp. 18-19.

¹⁰³ B. Ivanišević, "The War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court", International Centre for Transitional Justice, 2008, p. 17.

¹⁰⁴ Law on the State Investigation and Protection Agency. "Official Gazette of Bosnia and Herzegovina" 63/04.

¹⁰⁵ Law on Protection of Witnesses Under Threat and Vulnerable Witnesses, "Official Gazette of Bosnia and Herzegovina", 21/03.

¹⁰⁶ *Anger at secrecy surrounding Foca rape cases*, BIRN Justice Report, 8 March 2006. (*Anger at secrecy surrounding Foca rape cases*) <http://www.bim.ba/en/1/10/770/>

¹⁰⁷ *Anger at secrecy surrounding Foca rape cases*

¹⁰⁸ Šimšić Boban (X-KRZ-05/04), Trial Chamber Verdict, p. 9.

¹⁰⁹ J. Gardham, and M. J. Jarvis, "Women, Armed Conflict and International Law". Kluwer Law International, p. 107 and later.

¹¹⁰ A. J. Edman, "Crimes of Sexual Violence in the War Crimes Chamber of the State Court of Bosnia and Herzegovina: Successes and Challenges", *Human Rights Brief*. Vol 16. Issue 1. Fall 2008, p. 23

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¹¹² Consultation meeting with BiH NGOs, Sarajevo, 27 March 2009.

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¹¹⁴ Amnesty International interview with an employee of WSS, Sarajevo, 15 December 2008.

¹¹⁵ State Court's Registry Report, pp. 19-20.

¹¹⁶ State Court's Registry Report, p. 19.

¹¹⁷ Amnesty International interview with an employee of WSS, Sarajevo, 15 December 2008.

¹¹⁸ Amnesty International interview with an employee of Medica Zenica. Zenica, 9 December 2008 and with employees of Udruženje Zena Viktoria 99. Jajce, 9 December 2008.

¹¹⁹ Amnesty International interview with Sabiha, FBIH, 28 March 2009.

¹²⁰ S. M. Weine, A. Dzubur Kulenovic, I.Pavkovic and R. Gibbons, "Testimony Psychotherapy in Bosnian Refugees", Available at: <http://ajp.psychiatryonline.org/cgi/reprint/155/12/1720.pdf>; I. Agger, "The Blue Room: Trauma and Testimony Among Refugee Women: A Psycho-Social Exploration", Zed Books, 1992; J.D. Lindy, "An Outline for the Psychoanalytic Psychotherapy of Post-Traumatic Stress

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¹²⁴ M. Basoglu, M. Paker, Ö. Paker, E. Özmen, M. Marks, C. Incesu, D. Sahin, N. Sarimurat “A comparison of tortured with matched non-tortured political activists in Turkey” *American Journal of Psychiatry*, 151, (1994), pp. 76-81.

¹²⁵ Amnesty International interview with a psychologist working at Vive Žene, Tuzla, 28 March 2009.

¹²⁶ Consultation meeting with BiH NGOs, Sarajevo, 27 March 2009.

¹²⁷ State Strategy for the Work on War Crimes Cases. Available on the website of the BiH Ministry of Justice under the following link:
<http://www.mpr.gov.ba/userfiles/file/Projekti/Drzavna%20strategije%20za%20rad%20na%20predmetima%20RZ.pdf> Accessed on 19 April 2008. (State Strategy)

¹²⁸ Bosnia and Herzegovina. 2008 Progress Report. European Commission. 05 November 2008, p. 22.

¹²⁹ Naletilić v. Croatia. Case No. 51891/99. European Court of Human Rights.

¹³⁰ European Convention on Human Rights. Article 7.2.

¹³¹ The case of Abdulahim Maktouf, AP-1785/06. Constitutional Court of Bosnia and Herzegovina. Decision on Admissibility and Merits, 30 March 2007. para 70-79. (Maktouf case)

¹³² Maktouf case, para 89.

¹³³ Amnesty International interview with employees of Izvor Prijedor, 11 December 2008.

¹³⁴ Amnesty International interview with an RS war crimes prosecutor, Banja Luka, 10 December 2008.

¹³⁵ UNDP Bosnia and Herzegovina, “Solving War Crimes Cases in Bosnia and Herzegovina. Report on the Capacities of Courts and Prosecutor Offices' within Bosnia and Herzegovina to Investigate, Prosecute and Try War Crimes Cases”, 2008, p.14.

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¹³⁷ Human Rights Watch, “Still Waiting. Bringing Justice for War Crimes, Crimes against Humanity, and Genocide in Bosnia and Herzegovina's Cantonal and District Courts”. 2008, p. 24.

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¹³⁹ For example: Human Rights Watch, “Still Waiting. Bringing Justice for War Crimes, Crimes against Humanity, and Genocide in Bosnia and Herzegovina's Cantonal and District Courts”. 2008; UNDP

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¹⁴⁷ State Strategy.

¹⁴⁸ The General Framework Agreement for Peace in Bosnia and Herzegovina. Annex 6: Agreement on Human Rights. Available at: http://www.ohr.int/dpa/default.asp?content_id=374 Accessed on 11 May 2009. Based on Annex 6 of the Dayton Peace Agreement, the European Convention on Human Rights and its Protocols as well as the International Covenant on Civil and Political Rights, the Convention against Torture and other Cruel Inhuman and Degrading Treatment, are directly applicable in Bosnia and Herzegovina and so is the right to a remedy enshrined by them.

¹⁴⁹ Permanent Court of Arbitration: Chorzow Factory Case (Germany v. Poland), 1928.

¹⁵⁰ Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation. 19-21 March 2007. Article 3(e).

¹⁵¹ For example governments of Argentina, Chile, Peru, East Timor, Brazil or South Africa have developed different reparation programmes depending on the needs of the victims.

¹⁵² The UN Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. Adopted by the UN General Assembly on 16 December 2005. Art. 19. (UN Basic Principles).

¹⁵³ UN Basic Principles, Art. 20.

¹⁵⁴ UN Basic Principles, Art. 20.

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¹⁵⁶ Bosnia and Herzegovina. 2008 Progress Report. European Commission. 05 November 2008, p. 26. (BiH Progress Report 2008).

¹⁵⁷ *Šehid* – in Bosnian refers to a Bosniak (Bosnian Muslim) person who fought in the Army of Bosnia and Herzegovina and was killed during the war.

¹⁵⁸ International Court of Justice. Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide. Bosnia and Herzegovina vs. Serbia and Montenegro. Judgment of 26 February 2007.

¹⁵⁹ The Law on the Protection of Civilian Victims of War in Republika Srpska and the Law on the Basis of the Social Protection, Protection of Civilian Victims of War and Families with Children in the FBiH.

¹⁶⁰ CESCR, Concluding Observations, para. 18.

¹⁶¹ CESCR, Concluding Observations, para. 39.

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¹⁶³ *Skandalozno: Vlada štedi samo na RVI I žrtvama rata*. Dnevni Avaz. 26 July 2009.

¹⁶⁴ *Skandalozno: Vlada štedi samo na RVI I žrtvama rata*. Dnevni Avaz. 26 July 2009.

¹⁶⁵ The RS Law on Protection of Civilian Victims of War, "Official Gazette of the Republika Srpska", No 25/93, 30 December 2003 with later amendments. Article 2. and the RS Law on the Rights of Servicemen, Military Invalids and Families of the Deceased Servicemen of the Defence of Motherland War in Republika Srpska, "Official Gazette of the Republika Srpska", No 46/04 and 53/04. Article 4.

¹⁶⁶ The Law on Amendments and Additions to the Law on the Basis of the Social Protection, Protection of Civilian Victims of War and Families with Children in the FBiH, "Official Gazette of the Federation BiH", No 39/06. Article 5.

¹⁶⁷ The Law on the Basis of the Social Protection, Protection of Civilian Victims of War and Families with Children in the FBiH. Article 9.

¹⁶⁸ Human Papillomavirus See: <http://en.wikipedia.org/wiki/Hpv>

¹⁶⁹ Amnesty International interview with Maja, Republika Srpska, 29 March 2009.

¹⁷⁰ UN Basic Principles Principle 10.

¹⁷¹ Amnesty International interview with Assistant Minister for Veterans and Protection of the RS - Radomir Graonić, Banja Luka, 10 December 2008.

¹⁷² The UN Convention on the Rights of Persons with Disabilities states that "Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others". The UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities define disability as follows: "The term "disability" summarizes a great number of different functional limitations occurring in any population in any country of the world. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature."

¹⁷³ UN Committee on Economic, Social and Cultural Rights, General Comment No. 19: *The Right to Social Security* (Art. 9), UN Doc. E/C.12/GC/19, 4 February 2008, paras 29 and 30.

¹⁷⁴ ICTY. Prosecutor vs. Milomir Stakic. Judgment of 31 July 2003

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- ¹⁷⁵ *Do kada ce se isljednici prijedorskih logora rugati u lice zrtvama?* Available at: <http://www.kozarac.org/modules.php?name=News&file=print&sid=266>
- ¹⁷⁶ Amnesty International interview with Taida, FBiH, 28 March 2009.
- ¹⁷⁷ Amnesty International interview with Bakira Hasečić, *Žene Žrtve Rata*, 17 December 2008, Illidža-Sarajevo.
- ¹⁷⁸ Šimšić, Trial chamber verdict p. 26.
- ¹⁷⁹ Amnesty International interview with Bakira Hasečić, *Žene Žrtve Rata*, 17 December 2008, Illidža-Sarajevo.
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- ¹⁸⁴ Committee on Economic, Social and Cultural Rights, General Comment No. 19, para 22.
- ¹⁸⁵ Selimović et al. vs. Republika Srpska. Decision of the Human Rights Chamber of 7 November 2003
- ¹⁸⁶ Avdo and Esmā Palić vs. Republika Srpska. Decision of the Human Rights Chamber of 11 January 2001.
- ¹⁸⁷ The BiH Human Rights Chamber in January 2004 was transformed into the BiH Human Rights Commission within the Constitutional Court of BiH.
- ¹⁸⁸ UNDP. "Transitional Justice Consultation. Facing the Past, Unlocks the Door to the Future" Fojnica, 4-6 June 2008. Handout material, p. 13.
- ¹⁸⁹ For more about the legal framework please see: Analysis of the Legal Framework and Case Law Related to the Compensation of Material and Consequential Damage Emerged During the Hostilities in Bosnia and Herzegovina. LEX International – Banja Luka. March 2006. Available at: [http://www.seeran.org/inside/publications/0.685907001145605197_lex-analysis_of_the_legal_framework..._\(english\).doc](http://www.seeran.org/inside/publications/0.685907001145605197_lex-analysis_of_the_legal_framework..._(english).doc). Accessed 17 May 2009. The legal framework includes: the Law on Determination and Manner of Settling the Internal Debt of Republika Srpska (RS); the Law on Determination and Manner of Settling the Internal Liabilities of the Federation of Bosnia and Herzegovina (FBiH); the Law on Obligatory Relations of the SFRY; The Law on Temporary Postponement of the Execution of Claims upon the Executive Decision to the Burden of BiH Institutions' Budget and International Liabilities of BiH; Law on Realization of the Right to Material and Consequential Damages emerged in the period of hostilities between 20 May 1992 and 19 June 1996; RS Law on Executive Proceedings; Law on Determination and Realization of Claims Emerged in the Period of Hostilities and Direct Danger of War in the FBiH; the Provision on Determination and Realization of the Public Debt of the Federation of BiH Emerged in the Period of Hostilities and Direct Danger of War.
- ¹⁹⁰ Documenta – Center for Dealing with the Past; Humanitarian Law Center; Research and Documentation Center, "Transitional Justice in Post-Yugoslav Countries. Report for 2006", p. 57.
- ¹⁹¹ *Prijedlog Zakona o Besplatnoj Pravnoj Pomoci*. Available at:

<http://www.parlament.ba/download/zdocs/Prijedlog+zakona+o+besplatnoj+pravnoj+pomoci+bos..pdf/0367a124779ad38c169b6fa5002dcb59>

- ¹⁹² Amnesty International interview with Emina, FBiH, 28 March 2009.
- ¹⁹³ 'Karadžić mi duguje 35 mil. USD'. *Nacional*. No. 663. 29 July 2008. Available at: <http://www.nacional.hr/clanak/47634/karadzic-mi-duguje-35-mil-usd>. Accessed on 8 May 2009.
- ¹⁹⁴ Amnesty International interview with Nusreta Sivic, Prijedor, 29 March 2009.
- ¹⁹⁵ BiH Criminal Code. Article 78.
- ¹⁹⁶ B. Ivanisevic, "The War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court", International Centre for Transitional Justice. 2008, p.22.
- ¹⁹⁷ Amnesty International interviews with survivors of rape, various locations, March 2009 and a consultation meeting with BiH NGOs, Sarajevo, 26-27 March 2009.
- ¹⁹⁸ BIRN. Justice Report. Justice and the Admission of Guilt. 8 July 2008. Available at: <http://www.bim.ba/en/123/10/11642/>
- ¹⁹⁹ BiH Progress Report, p. 20.
- ²⁰⁰ Socially owned apartments existed in socialist countries, including the former Yugoslavia. Usually they were built from a fund to which all employees of state enterprises had to pay monthly contributions. They were then allocated by the state based on a set of criteria including the size of the family and the social status. They nominally belonged to the state but their inhabitants had all occupancy and tenancy rights. The occupancy and tenancy rights to the apartments could be inherited.
- ²⁰¹ Amnesty International interviews with survivors of rape, various locations, March 2009 and a consultation meeting with BiH NGOs, Sarajevo, 27 March 2009.
- ²⁰² UNHCR Statistics Summary: http://www.unhcr.ba/updatedec08/SP_12_2008.pdf
- ²⁰³ H. Haider. "(Re)Imagining Coexistence: Striving for Sustainable Return, Reintegration and Reconciliation in Bosnia and Herzegovina", *International Journal of Transitional Justice*, Vol. 3. 2009, p. 92.
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- ²⁰⁵ The Laws on Displaced/Expelled Persons and Repatriates, in the Federation of BiH and RS.
- ²⁰⁶ Concluding comments of the Committee on the Elimination of Discrimination against Women: Bosnia and Herzegovina. CEDAW/C/BIH/CO/3. 2 June 2006. para. 37.
- ²⁰⁷ *Chetnik* – In Bosnian, Croatian and Serbian – *Cetnik*: Serbian nationalist. The term used also to refer to members of Serbian paramilitary group.
- ²⁰⁸ Amnesty International interviews with Nejra, FBiH, 28 March 2009.
- ²⁰⁹ Amnesty International, *Bosnia and Herzegovina: "Behind closed gates: ethnic discrimination in employment"* (Index: EUR 63/001/2006).
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- ²¹⁴ Amnesty International interviews with Emina, FBiH, 28 March 2009.
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- ²¹⁷ UN Basic Principles, Art. 21.
- ²¹⁸ International Covenant on Economic, Social and Cultural Rights. Article 12.
- ²¹⁹ Preamble to the Constitution of the World Health Organization as adopted by the International Health Conference, New York, 19-22 June, 1946.
- ²²⁰ Committee on Economic, Social and Cultural Rights. General Comment No. 14 on the right to the highest attainable standard of health. E/C.12/2000/4. 11 August 2000. para. 43.
- ²²¹ Report of the Special Rapporteur on the right to the highest attainable standard of physical and mental health, Commission on Human Rights, Paul Hunt, Sixtieth Session, UN Doc E/CN.4/2004/49, 16 February 2004, para 25. (Paul Hunt's Report).
- ²²² Committee on the Elimination of Discrimination Against Women, General Recommendation No. 19, Violence Against Women, para 7.
- ²²³ Committee on the Elimination of Discrimination Against Women, General Recommendation No. 24, Art. 12: Women and Health, Para 15 (a).
- ²²⁴ International Covenant on Economic, Social and Cultural Rights. Article 12.
- ²²⁵ Paul Hunt's Report, para 46 (a).
- ²²⁶ Paul Hunt's Report, para. 12.
- ²²⁷ Interview with Udruženje Žena Viktorija 99. 9 December 2008.
- ²²⁸ Interview with Udruženje Žena Viktorija 99. 9 December 2008. It gives an average of six persons per year or one person every two months.
- ²²⁹ Interview with Forum Žena Bratunac. 12 December 2008.
- ²³⁰ Amnesty International interview with Centar za žrtve torture (CTV), Sarajevo, 25 March 2009.
- ²³¹ Amnesty International interview with Sanja, FBiH, 28 March 2009.
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- ²⁴⁶ Paul Hunt's Report, para 15 (b).
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- ²⁴⁸ Guidelines for medico-legal care for victims of sexual violence. World Health Organization, 2003, p.73.
- ²⁴⁹ The Law on the Protection of Civilian Victims of War in Republika Srpska and the Law on the Basis of the Social Protection, Protection of Civilian Victims of War and Families with Children in the FBiH.
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- ²⁵¹ Amnesty International interview with Assistant Minister for Veterans and Protection of the RS - Radomir Graonić, Banja Luka, 10 December 2008.
- ²⁵² CESCR, Concluding Observations, para. 19.
- ²⁵³ CESCR, Concluding Observations, para. 41.
- ²⁵⁴ Amnesty International interview with UNDP, Sarajevo, 25 March 2009.
- ²⁵⁵ Amnesty International interview with Selma, FBiH, 28 March 2009.
- ²⁵⁶ Amnesty International interview with Aida, FBiH, 28 March 2009.
- ²⁵⁷ Amnesty International interview with Sabiha, FBiH, 28 March 2009.



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‘WHOSE JUSTICE?’

THE WOMEN OF BOSNIA AND HERZEGOVINA ARE STILL WAITING

Rape and other forms of sexual violence against women were widespread during the 1992-1995 war in Bosnia and Herzegovina (BiH). Despite the conflict ending more than 13 years ago, successive governments have consistently failed to bring those responsible to justice and to ensure survivors' access to an effective remedy. The BiH authorities have also failed to provide survivors of rape and other forms of sexual violence with reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

Many perpetrators of war crimes of sexual violence continue to enjoy impunity and often live in the same communities as their victims. This contributes to continuing trauma and other psychological problems for survivors of these crimes. Moreover, psychological support is often not available and access to health services limited, especially for women in remote areas of the country. Many survivors are unemployed and live in poverty and cannot afford even prescribed medicines. The issue of rape remains a taboo in BiH and survivors of this crime continue to be stigmatized by society.

This report documents how the BiH authorities have violated a wide range of rights of the survivors of rape and other forms of sexual violence. It concludes with a set of recommendations which, if implemented, would enhance the protection of women survivors of war crimes of sexual violence in BiH.

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