



INTERNATIONAL WOMEN'S HUMAN RIGHTS LAW CLINIC

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August 23, 2008

Mr. Serge Brammertz
Chief Prosecutor
International Criminal Tribunal
for Former Yugoslavia
The Hague, The Netherlands
BY EMAIL

Re: Amendment of the Karadzic indictment respecting rape and sexualized violence

Dear Mr. Brammertz:

We are writing both to congratulate you on the arrest of Radovan Karadzic and to emphasize the importance of full prosecution of the sexual violence crimes for which he should be held responsible in his individual capacity as well as his role as supreme political and military commander of the Bosnian Serbs.

The undersigned groups and individuals have been involved in pressing for the effective and appropriate prosecution of sexualized violence at the ICTY, ICTR, ICC and in other contexts of post-conflict justice. Some of us have worked directly with women victims of the brutal war that Radovan Karadzic waged and others with victims of sexualized violence in other contexts. We have appreciated the significance of the ICTY's progressive jurisprudence on gender crimes and sexual violence as well as your own effort to include sexualized violence charges belatedly in the *Lukic* case.

At the same time, we are concerned that the current indictment is fatally flawed with respect to sexualized crimes within the ICTY's jurisdiction. There is no question that the Karadzic case will go down in history as the most important case the ICTY adjudicates. The ground broken in regard to both jurisprudence and proof of responsibility for sexualized violence is a key part of the legacy of the ICTY that mustn't be diluted in this case. Moreover, holding Radovan Karadzic responsible for these crimes—given his position and role—is a matter of supreme importance to women in Bosnia, the former Yugoslavia and the world.

Accordingly, we urge you to stand firm on your earlier statement that in the amended indictment “*we will ensure that it reflects the current case law, facts already established by the court, and evidence collected over the past eight years.*” We trust that you agree that the current bare allegations of sexual violence as persecution and genocide are both legally and factually inadequate in light of Radovan Karadzic's direct and indirect responsibility for the widespread and systematic nature of sexualized violence.

It is critical, therefore, that the amended indictment charge sexualized violence as war crimes, including sexual violence as torture; and as crimes against humanity, including rape, torture, enslavement, and inhumane treatment. The judgement in *Kunarac*, for example, recognizing rape and sexualized violence as torture and enslavement as well as *Kvočka*, recognizing rape and sexualized threats as torture illustrate the legal bases for this amendment. Guilty pleas in the case of *Biljana Plavsic* and conviction in *Krajisnik* provide facts established by the court and reflect part of the evidence of sexualized violence collected by the court.

While sexualized violence was undoubtedly part of the persecution inflicted upon the Bosnians Muslims as a group, it is not acceptable simply to include these distinct gender crimes in the omnibus persecution crime as in the current indictment; they merit distinct charges embodying the jurisprudence of the Tribunal. We note that sexual violence was charged as genocide and that these charges should be developed.

To ensure that these crimes are properly developed, we urge, if it is not already the case, that you ensure that there is gender expertise in the

Karadzic team and oversight by a high-level gender legal advisor. The announced tendency of your predecessor to exclude or diminish sexual violence charges makes this all the more essential as you move forward.

We recognize that the pressure on you and the Court to bring the ICTY to a close is great and we appreciate your statement before the Security Council to the effect that the closing strategy should not ignore the unwavering demands of victims for justice.

To advance the closing strategy, however, by undermining gender-inclusive justice and relegating sexualized violence once again to the margins of international criminal law would be an profound and bitter insult to the survivors of sexualized violence. This would be cruelly ironic as it is the survivors of sexual violence, -- perhaps more than other victims,-- who require the proper and public assignment of fault to overcome trauma and stigma and to enable their healing and reintegration in society.

Moreover, it is discriminatory to suggest that sexual violence is the culprit in regard to delay; sexualized violence is one category of the gravest crimes, all of which require prosecutorial judicial time and resources. Moreover, unlike in *Lukic*, here the delay was occasioned by Karadzic's own evasion of arrest; the proposed amendment is pre-trial; and at stake is the fundamental obligation as well as the legacy of the Tribunal as a vehicle of gender-inclusive justice.

To short-circuit the prosecution of gender crimes would be a betrayal of women survivors in Bosnia and in many conflict zones who are struggling for recognition by the institutions of international justice; it would also undermine the efforts of the global movement of women seeking to eliminate violence against women through justice on every level.

Thus, to close the ICTY and its most significant case with only a partial or superficial treatment of sexual violence would not only turn back the clock on the progress made; it would also undermine the capacity of international criminal law to develop as a meaningful deterrent to such abuse, especially with regard to high-level actors. Notwithstanding the atrocity of rape and

sexualized violence, it is a constant struggle to maintain sexualized violence at the core of the work of the international criminal tribunals and courts.

Accordingly, the undersigned urge that the full prosecution of rape and sexualized violence against Radovan Karadzic, given his commanding role and indeed his authorship or at best acquiescence in the strategy of using such violence as a tactic of war and ethnic cleansing, is of world-wide and historic significance.

In closing, we want to make clear that you can count on our support and that of many other groups —whether as *amicus curiae* before the Tribunal or before the Security Council--for the time to fully incorporate sexual violence crimes. Please let Professor Copelon know if we can be of assistance at this time as we hope that we can work together on this.

Sincerely

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