

THE PROSECUTOR OF THE TRIBUNAL

AGAINST

DRAGOLJUB KUNARAC

AMENDED INDICTMENT

The Prosecutor of the International Criminal Tribunal for the former Yugoslavia, pursuant to her authority under article 18 of the Statute of the Tribunal charges:

DRAGOLJUB KUNARAC

with **CRIMES AGAINST HUMANITY** and **VIOLATIONS OF THE LAWS OR CUSTOMS OF WAR**, as set forth below:

BACKGROUND

1.1 The city and municipality of Foca are located south-east of Sarajevo, in the Republic of Bosnia-Herzegovina and borders Serbia and Montenegro. According to the 1991 census, the population of Foca consisting of 40,513 persons was 51.6 % Muslim, 45.3 % Serbian and 3.1% others. The political and military take-over of the municipality of Foca started with the first military actions in the town of Foca on 7 April 1992. The Serb forces, supported by artillery and heavy weapons, proceeded to take over Foca, section by section. The take-over of Foca town was complete by 16 or 17 April 1992. The surrounding villages continued to be under siege until mid- July 1992.

1.2 As soon as the Serb forces had taken over parts of Foca town, military police accompanied by local and non-local soldiers started arresting Muslim and Croat inhabitants. Until mid-July 1992 they continued to round up and arrest Muslim villagers from the surrounding villages in the municipality. The Serb forces separated men and women and unlawfully confined thousands of Muslims and Croats in various short and long-term detention facilities or kept them essentially under house arrest. During the arrests many civilians were killed, beaten or subjected to sexual assault.

1.3 The Foca Kazneno-popravni Dom ("KP Dom"), one of the largest prison facilities in the former Republic of Yugoslavia, was the primary detention facility for men. Muslim women, children and the elderly were detained in houses, apartments and motels in the town of Foca or in surrounding villages, or at short and long-term detention centres such as Buk Bijela, Foca High School and Partizan Sports Hall, respectively. Many of the detained women were subjected to humiliating and

degrading conditions of life, to brutal beatings and to sexual assaults, including rapes.

1.4 Partizan Sports Hall ("Partizan") functioned as a detention centre for women, children and the elderly from at least on or about 13 July 1992 until at least 13 August 1992. The detainees held at Partizan, during this time period, numbered at least 72. The detainees were all civilian Muslim women, children and a few elderly persons from villages in the municipality of Foca.

1.5 Living conditions in Partizan were brutal. The detention was characterised by inhumane treatment, unhygienic facilities, overcrowding, starvation, physical and psychological torture, including sexual assaults.

1.6 Immediately after the transfer of women to Partizan, a pattern of sexual assaults commenced. Armed soldiers, mostly in groups of three to five, entered Partizan, usually in the evenings, and removed women. When the women resisted or hid, the soldiers beat or threatened the women to force them to obey. The soldiers took the women from Partizan to houses, apartments or hotels for the purpose of sexual assault and rape.

1.7 Three witnesses, identified by the pseudonyms FWS-48, FWS-95 and FWS-50, a 16 year old girl, were detained at Partizan from about 13 July until 13 August 1992. Two others, identified by the pseudonyms FWS-75 and FWS-87, a 15 year old girl, were detained in Partizan from about 13 July until 2 August 1992. Almost every night during their detention, Serb soldiers took FWS-48, FWS-95, FWS-50, FWS-75 and FWS-87 out of Partizan and sexually abused them (vaginal and anal penetration and fellatio).

1.8 On or around 13 August 1992, most detainees were released from Partizan and deported to Montenegro. The women who left on the 13 August convoy received medical care for the first time in Montenegro. Many women suffered permanent gynaecological harm due to the sexual assaults. At least one woman can no longer have children. All the women who were sexually assaulted suffered psychological and emotional harm; some remain traumatised.

1.9 The Kalinovik municipality is located some 20 km to the south of Sarajevo and borders the Foca municipality. From mid-May onwards, the Serb forces were in control of Kalinovik municipality. The take-over was followed by measures against the non-Serb population including arrest. While the male non-Serb population was detained in the military warehouse called Barotni, the women and children were detained in the Kalinovik Primary School, which is located in the centre of Kalinovik near the police station. At the end of June/beginning of July, citizens from the municipality of Gacko, captured while crossing the Kalinovik municipality on their flight to Central Bosnia, were also detained in the Kalinovik Primary School.

1.10 **DRAGOLJUB KUNARAC** and soldiers under his command had unfettered access to the detention facilities Partizan Sports Hall and Kalinovik Primary School.

THE ACCUSED

2.1 **DRAGOLJUB KUNARAC** also known as "**Zaga**" and "**Dragan**", son of Aleksa and Stojka, was born on 15 May 1960 in Foca. He lives at Unjaza Nikole 2-5 in Foca, now renamed Srbinje. For several years before the war he lived in Tivat, Montenegro.

SUPERIOR AUTHORITY

3.1 From at least June 1992 until February 1993, **DRAGOLJUB KUNARAC** was the commander of a special unit for reconnaissance of the Bosnian Serb Army. During the time relevant to this indictment, this special unit consisted of volunteers, mainly from Montenegro, some of them recruited by the accused himself. **DRAGOLJUB KUNARAC** had his headquarters in a house in the Aladza neighbourhood in Foca at Ulica Osmana Dikica no. 16. He stayed in the house with about 10 to 15 soldiers after the take-over of Foca. In his capacity as commander of these soldiers, **DRAGOLJUB KUNARAC** was responsible for the acts of the soldiers subordinate to him and knew or had reason to know that his subordinates sexually assaulted Muslim women. He was personally involved in sexual assaults and rape of women.

GENERAL ALLEGATIONS

4.1 At all times relevant to this indictment, an armed conflict existed in the Republic of Bosnia-Herzegovina in the territory of the former Yugoslavia.

4.2 At all times relevant to this indictment, the accused was required to abide by the laws or customs governing the conduct of war.

4.3 Unless otherwise set forth below, all acts and omissions set forth in this indictment took place between July 1992 and February 1993.

4.4 In each count charging crimes against humanity, a crime recognised by Article 5 of the Statute of the Tribunal, the acts or omissions were part of a widespread, large-scale or systematic attack against a civilian population, specifically the Muslim population of the municipality of Foca and Kalinovik.

4.5 Witnesses and victims are identified in this indictment using code names or pseudonyms, such as FWS-95 or initials, for example, D.B.

4.6 The accused **DRAGOLJUB KUNARAC** is individually responsible for the crimes charged against him in this indictment, pursuant to Article 7 (1) of the Statute of the Tribunal. Individual criminal responsibility includes committing, planning, initiating, ordering or aiding and abetting in the planning, preparation or execution of any acts or omissions set forth below.

4.7 **DRAGOLJUB KUNARAC** in respect of counts 1 to 4 and counts 14 to 17 is also, or alternatively, criminally responsible as a superior for his subordinates pursuant to Article 7 (3) of the Statute of the Tribunal. Superior criminal responsibility is the responsibility of a superior officer for the acts of his subordinate if the superior knew or had reason to know that his subordinate was about to commit such acts or had done so and the superior failed to take necessary and reasonable measures to prevent such further acts or to punish the subordinate thereof. By failing to take the actions required of a person in superior authority, **DRAGOLJUB KUNARAC** is responsible for all the crimes set out in the respective counts pursuant to Article 7(3) of the Statute of the Tribunal.

THE CHARGES

COUNTS 1 to 4

(RAPE OF FWS-48, FWS-50, FWS-75, FWS-87, FWS-95 AND OTHER WOMEN AT THE HOUSE ULICA OSMANA DIKICA NO. 16)

5.1 Several groups of perpetrators assaulted women detained at Partizan. One group, under the command of **Dragoljub Kunarac**, was a special unit for reconnaissance detail comprising mostly Serb soldiers from Montenegro. This group maintained their headquarters in a house in the Aladza neighbourhood in Foca at Ulica Osmana Dikica no. 16. Usually at nights, **DRAGOLJUB KUNARAC**, accompanied by some of his soldiers, removed women from Partizan and took them to the house Ulica Osmana Dikica no. 16, knowing that they would be sexually assaulted there by soldiers under his command. After taking the women to his headquarters, **DRAGOLJUB KUNARAC** would sometimes stay and take one of the women to a room and rape her personally. Even when **DRAGOLJUB KUNARAC** did not personally rape one of the women, he often remained at the headquarters or visited it periodically while other soldiers raped and sexually assaulted the women in the house.

5.2 On at least two occasions between 13 July and 1 August 1992, **DRAGOLJUB KUNARAC** took FWS-87 to his headquarters at Ulica Osmana Dikica no. 16. On both occasions, two Montenegrin soldiers commanded by the accused were present and raped FWS-87.

5.3 **DRAGOLJUB KUNARAC** took FWS-75 and D. B. several times to his headquarters at Ulica Osmana Dikica no. 16, where his soldiers were housed. On or around 16 July 1992, **DRAGOLJUB KUNARAC**, together with his deputy "GAGA", took FWS-75 and D. B. to this house for the first time. When they arrived at the headquarters, a group of soldiers were waiting. **DRAGOLJUB KUNARAC** took D. B. to a separate room and raped her, while FWS-75 was left behind together with the other soldiers. For about 3 hours, FWS-75 was gang-raped by at least 15 soldiers (vaginal and anal penetration and fellatio). They sexually abused her in all possible ways. On other occasions in the headquarters, one to three soldiers, in turn, raped her.

5.4 On 2 August 1992, **DRAGOLJUB KUNARAC** took FWS-75, FWS-87, FWS-50 and D. B. to the headquarters at Ulica Osmana Dikica no. 16. Some women from the Kalinovik women's detention camp were also present. On this occasion, **DRAGOLJUB KUNARAC** and three other soldiers raped FWS-87. Several soldiers raped FWS-75 during the entire night. A Montenegrin soldier raped FWS-50 (vaginal penetration) and threatened to cut her arms and legs and to take her to church to baptise her.

5.5 On at least two occasions between 13 July and 2 August 1992, **DRAGOLJUB KUNARAC** took FWS-95 out of Partizan to the headquarters at Ulica Osmana Dikica no. 16 for the purpose of rape. The first time, **DRAGOLJUB KUNARAC** took FWS-95 to his headquarters together with two other women. He took her in a room and raped her personally. Then FWS-95 was raped by three more soldiers in this same room. The second time, after **DRAGOLJUB KUNARAC** had taken her to Ulica Osmana Dikica no. 16, FWS-95 was raped by two or three soldiers, but not by the accused himself.

5.6 By the foregoing acts and omissions in relation to the witnesses FWS-50, FWS-75, FWS-87, FWS-95, and the other women specified above, described in paragraphs 5.1 to 5.5, **DRAGOLJUB KUNARAC** committed:

COUNT 1:

A **CRIME AGAINST HUMANITY** punishable under Article 5 (f) (torture) of the Statute of the Tribunal;

COUNT 2:

A **CRIME AGAINST HUMANITY** punishable under Article 5 (g) (rape) of the Statute of the Tribunal;

COUNT 3:

A **VIOLATION OF THE LAWS OR CUSTOMS OF WAR**, punishable under Article 3 of the Statute of the Tribunal and recognised by Common Article 3 (1) (a) (torture) of the Geneva Conventions;

COUNT 4:

A **VIOLATION OF THE LAWS OR CUSTOMS OF WAR**, punishable under Article 3 of the Statute of the Tribunal and recognised by Additional Protocol II Art 4 (rape) of the Geneva Conventions.

**COUNTS 5 to 8
(RAPE OF FWS-48)**

6.1 On or around 13 July 1992, **DRAGOLJUB KUNARAC** took FWS-48 and two other women to the Hotel Zelengora. FWS-48 refused to go with him and **DRAGOLJUB KUNARAC** kicked her and dragged her out. At Hotel Zelengora, FWS-48 was placed in a separate room and **DRAGOLJUB KUNARAC** and **ZORAN VUKOVIC**, a local military commander, raped her (vaginal penetration and fellatio). Both perpetrators told her that she would now give birth to Serb babies.

6.2 On or around 18 July 1992, **GOJKO JANKOVIC**, the military commander of another local unit, took FWS-48, FWS-95 and another woman to a house near the bus station. From there, **DRAGOLJUB KUNARAC** took FWS-48 to another house in the Donje Polje neighbourhood where he raped her (vaginal penetration and fellatio).

6.3 By the foregoing acts and omissions in relation to the witness FWS-48, described in paragraphs 6.1 and 6.2, **DRAGOLJUB KUNARAC** committed:

COUNT 5:

A **CRIME AGAINST HUMANITY** punishable under Article 5 (f) (torture) of the Statute of the Tribunal;

COUNT 6:

A **CRIME AGAINST HUMANITY** punishable under Article 5 (g) (rape) of the Statute of the Tribunal;

COUNT 7:

A **VIOLATION OF THE LAWS OR CUSTOMS OF WAR**, punishable under Article 3 of the

Statute of the Tribunal and recognised by Common Article 3 (1) (a) (torture) of the Geneva Conventions;

COUNT 8:

A VIOLATION OF THE LAWS OR CUSTOMS OF WAR, punishable under Article 3 of the Statute of the Tribunal and recognised by Additional Protocol II Art 4 (rape) of the Geneva Conventions.

COUNTS 9 and 10 (RAPE OF FWS-87 IN KARAMAN'S HOUSE IN MILJEVINA)

7.1 On or about 2 August 1992, **DRAGOLJUB KUNARAC**, together with Pero Elez, the military commander of a Serb unit based in Miljevina, municipality of Foca, transferred FWS-75, FWS-87 and two other women from Partizan to Miljevina, where they were detained in an abandoned Muslim house called Karaman's house, a place maintained by PERO ELEZ and his soldiers.

7.2 Sometimes in either September or October 1992, **DRAGOLJUB KUNARAC** visited Karaman's house and raped FWS-87 (vaginal penetration).

7.3 By the foregoing acts in relation to the witness FWS-87, described in paragraphs 7.1 and 7.2, **DRAGOLJUB KUNARAC** committed:

COUNT 9:

A CRIME AGAINST HUMANITY punishable under Article 5 (g) (rape) of the Statute of the Tribunal;

COUNT 10:

A VIOLATION OF THE LAWS OR CUSTOMS OF WAR, punishable under Article 3 of the Statute of the Tribunal and recognised by Additional Protocol II Art 4 (rape) of the Geneva Conventions.

COUNTS 11 to 13 (RAPE OF FWS-183 AND PLUNDER OF PROPERTY)

8.1. One night in mid-July 1992, **DRAGOLJUB KUNARAC**, together with two of his soldiers, accused the witness FWS-183 of sending messages out over radio. They looted the witness' apartment and took her to the banks of the Cehotina river in Foca near Velecevo. There, the accused questioned the witness about the money and gold she and other Muslims in her flat were keeping. During the questioning, the witness was threatened with death and that her son would be slaughtered. After the threats, the witness was raped vaginally by all three soldiers. During the rapes, **DRAGOLJUB KUNARAC** humiliated the witness by saying that they (the soldiers) would never know whose son this was. After returning the witness to her flat, the accused robbed her of all the gold and money she had hidden.

8.2 By the foregoing acts in relation to the witness FWS-183, described in paragraph 8.1, **DRAGOLJUB KUNARAC** committed:

COUNT 11:

A **VIOLATION OF THE LAWS OR CUSTOMS OF WAR**, punishable under Article 3 of the Statute of the Tribunal and recognised by Common Article 3 (1) (a) (torture) of the Geneva Conventions;

COUNT 12:

A **VIOLATION OF THE LAWS OR CUSTOMS OF WAR**, punishable under Article 3 of the Statute of the Tribunal and recognised by Additional Protocol II Art 4 (rape) of the Geneva Conventions:

COUNT 13

A **VIOLATION OF THE LAWS OR CUSTOMS OF WAR**, punishable under Article 3 (e) (plunder of private property) of the Statute of the Tribunal.

COUNTS 14 to 17 (ENSLAVEMENT AND RAPE OF FWS-101)

9.1 On 2 August 1992, in the presence of officials of the Kalinovik municipality, **Dragoljub Kunarac**, together with Pero Elez and some of their soldiers, took FWS-101, FWS-186, FWS-191 and 5 other young girls and women from the Primary School in Kalinovik and drove them to **DRAGOLJUB KUNARAC**'s headquarters at Ulica Osmana Dikica no. 16 in Foca. There the girls and young women, four of them from Gacko and 4 of them from Kalinovik, some of them as young as twelve and fifteen years of age, were divided among the soldiers present for the purpose of sexual assault. While the other girls and women were taken away to different places the same night, FWS-101 remained in the house Ulica Osmana Dikica no. 16.

9.2 Between 2 August 1992 and at least 9 August 1992, FWS-101, who at that time was 7 months pregnant, was detained in **DRAGOLJUB KUNARAC**'s headquarters at Ulica Osmana Dikica no. 16. During the entire period of her detention at this house, FWS-101 was subjected to repeated rapes. In addition to being repeatedly raped, the witness was beaten. She also had to clean the house and obey each order given to her by the accused and his subordinates. FWS-101 was treated as the personal property of **DRAGOLJUB KUNARAC** and his unit. Finally, a soldier who took pity on her, took FWS-101 to the Partizan Sports Hall, from where on 13 August 1992, she was transported to Montenegro.

9.3 By the foregoing acts and omissions in relation to the witness FWS-101, described in paragraphs 9.1 and 9.2, **DRAGOLJUB KUNARAC** committed:

COUNT 14:

A **CRIME AGAINST HUMANITY** punishable under Article 5 (c) (enslavement) of the Statute of the Tribunal;

COUNT 15:

A **CRIME AGAINST HUMANITY** punishable under Article 5 (g) (rape) of the Statute of the Tribunal;

COUNT 16:

A **VIOLATION OF THE LAWS OR CUSTOMS OF WAR**, punishable under Article 3 of the Statute of the Tribunal and recognised by Additional Protocol II Art 4 (rape) of the Geneva Conventions;

COUNT 17:

A **VIOLATION OF THE LAWS OR CUSTOMS OF WAR**, punishable under Article 3 of the Statute of the Tribunal and recognised by Common Article 3 (1) (c) (outrages upon personal dignity) of the Geneva Conventions.

**COUNTS 18 to 21
(ENSLAVEMENT AND RAPE OF FWS-186, FWS-191 AND J. G.)**

10.1 On 2 August 1992, the accused **DRAGOLJUB KUNARAC**, together with his deputy "GAGA" and GOJKO JANKOVIC, the commander of another Foca unit, took FWS-186, FWS-191 and J. G. from the house Ulica Osmana Dikica no. 16 to the abandoned house of Halid ^edic in Trnovace. There the men divided the girls among themselves and raped them the same night. On that occasion, **DRAGOLJUB KUNARAC** raped FWS-191.

10.2 FWS-186 and FWS-191 were kept in this house for approximately 6 months, while J. G. was transferred to Karaman's house in Miljevina for the purpose of rape. During the entire time of her detention in Trnovace, GOJKO JANKOVIC constantly raped FWS-186, while for at least two months, the accused **DRAGOLJUB KUNARAC** constantly raped FWS-191. Eventually, another soldier protected FWS-191 against further rapes. After 6 months this soldier took both witnesses away from the house.

10.3 FWS-186 and FWS-191 were treated as the personal property of **DRAGOLJUB KUNARAC** and GOJKO JANKOVIC. In addition to the rapes and other sexual assaults, FWS-186 and FWS-191 had to do all household chores and obey all demands.

10.4 By the foregoing acts and omissions in relation to the witnesses FWS-186, FWS-191 and J.G. described in paragraphs 10.1 to 10.3, **DRAGOLJUB KUNARAC** committed:

COUNT 18:

A **CRIME AGAINST HUMANITY** punishable under Article 5 (c) (enslavement) of the Statute of the Tribunal;

COUNT 19:

A **CRIME AGAINST HUMANITY** punishable under Article 5 (g) (rape) of the Statute of the Tribunal;

COUNT 20:

A VIOLATION OF THE LAWS OR CUSTOMS OF WAR, punishable under Article 3 of the Statute of the Tribunal and recognised by Additional Protocol II Art 4 (rape) of the Geneva Conventions;

COUNT 21:

A VIOLATION OF THE LAWS OR CUSTOMS OF WAR, punishable under Article 3 of the Statute of the Tribunal and recognised by Common Article 3 (1) (c) (outrages upon personal dignity) of the Geneva Conventions.

Louise Arbour
Prosecutor

Dated: 13 July 1998