

REPARATIONS FOR SURVIVORS OF CONFLICT-RELATED SEXUAL VIOLENCE



COUNTRY BRIEFING: BiH

Official Register of Survivors of conflict-related sexual violence (CRSV): No.

Commonly cited number of CRSV Survivors: Council of Europe (CoE) [estimates](#) that approx. 20,000 victims were raped or sexually abused during the 1992-1995 war in Bosnia and Herzegovina (BiH).

Estimated Real Number of CRSV Survivors: The BiH government estimated a much higher figure of approx. 50,000 people, and the [Report of the Secretary-General of the United Nations](#) noted that between 20,000 and 50,000 women were raped during the war.

Domestic Legal Framework for Administrative Reparations Programme: Yes. In BiH there is the Law on Social Protection, Protection of Civilian Victims of War and Protection of Families with Children of the Federation of BiH ([FBiH](#)) and in Republika Srpska (RS), there is the [Law on the Protection of Victims of Torture](#) and Decision on Protection of Civilian Victims of War in Brčko District (BD).

Mechanism to implement Administrative Reparations Framework: Yes, through competent ministries and various other bodies.

Domestic Avenues for Reparations through Courts: Judicial reparations can be sought through civil and criminal proceedings in the entity courts of the Federation of Bosnia and Herzegovina and Republika Srpska, Basic Court of Brčko District BiH and the Court of BiH as the competent courts for CRSV.

Approximate Number of Survivors having received any formal Reparations for CRSV: Approx. 1,000 CRSV survivors have received some form of reparation through administrative reparations mechanisms.

Survivor Perception regarding state of Implementation of Reparations: 26 years after the end of the war and after numerous unsuccessful attempts to access reparative mechanisms, survivors are dissatisfied with the implementation of reparations.

Ongoing CRSV: No



Nature and Scope of CRSV

Sexual violence has been recognised in BiH as a widespread crime partly used as a weapon in the war. Survivors of CRSV come from all over BiH, and include women and men from all ethnic groups. The largest proportion of victims were Bosniak Muslim women of all ages. All warring parties were responsible for these crimes. CRSV was systematic and institutionalised, as confirmed in the judgments of the International Criminal Tribunal for the former Yugoslavia (ICTY), which showed that CRSV was not just a random aspect of the conflict, but an integral part of it. Other national and international judgments also indicate that the motive for the sexual violence committed in BiH was ethnic intolerance.

It is difficult to determine where CRSV was most prevalent, but numerous reports and case law show that the majority of recorded crimes were committed in Višegrad, Foča, Rogatica, Prijedor, Zvornik, Vlasenica, Mostar, Konjic, Bijeljina, Brčko and various other locations. CRSV was committed during hostile takeovers of towns or when soldiers entered the homes of the targeted ethnic group. It also took place in prison settings; rapes were committed in concentration camps and in other detention facilities, as well as in houses - sometimes in the homes of the survivors themselves - schools, sports halls, cultural centres, clinics, work halls, recreational facilities and health care institutions. Hotel Vilina Vlas in Višegrad and Karaman's house in Foča were some of the most notorious facilities where CRSV was committed at scale. Survivors' testimonies speak of brutal examples of sexual violence against women and men, including imprisonment in places run as brothels, rape during interrogation, sexual mutilation and other highly traumatic incidents.

FACTS AND FIGURES

- Approx. 20,000 women and men were raped or sexually abused during the 1992-1995 war in BiH.
- Sexual violence committed throughout the whole territory of BiH, but most cases connected to areas of Višegrad, Foča, Rogatica, Prijedor, Zvornik, Vlasenica, Mostar, Konjic, Bijeljina i Brčko



Harm caused to Survivors, Families and Communities

CRSV in BiH that happened during the war, more than 26 years ago, has had long-lasting psychological, physical, economic and social impacts on survivors and their families. Many survivors still suffer from trauma associated with CRSV, which has significant consequences and is difficult to overcome. The vast majority of survivors suffer from post-traumatic stress disorder associated with different psychological conditions including depression, sleep difficulties, suicidal thoughts or attempts, trouble with concentration and aggression. The nature of physical injuries sustained is such that survivors also continue to experience physical consequences and medical conditions even two decades after the events. Unfortunately, many of the ongoing injuries and conditions remain untreated as survivors still face stigma which stops them from seeking rehabilitation. Survivors also often lack adequate medical support to address such health concerns. This is the case especially in rural areas where there are few medical services; if survivors want to access psychological support, they must travel to urban centres.

Social stigma still makes it difficult for many survivors to speak about their trauma which, along with the lack of adequate support, leads to a fear of seeking justice and reparation. Many survivors, and especially men, feel shame and hide what happened from their family. The vast majority of the survivors hide their trauma from their children because of fear about how the children would respond to it. This also affects family relations.

"My daughters don't know about me yet. I am encouraged to tell my story to other family members and other survivors in the association, but I'm still not brave enough to tell my daughters what I've survived. I chose to tell them that I was captured in the concentration camp, it's easier for me, but I can never tell them that I was raped." – Survivors' statement from a focus group held in Prokosovići, 4th of June 2021

"I want to be a good parent, not to worry that much and to believe that my child would be safe. But because of my trauma sometimes I see myself reacting differently than other parents. I'm worrying too much and sometimes even screaming at my daughter when she wants to go somewhere new, because I'm afraid, I remember what happened to me when I was her age." – Survivors' statement from a focus group held in Prokosovići, 4th of June 2021

The consequences of trauma and inadequacy of support for survivors prevents many from securing employment and achieving economic independence. Those who have children especially fear for their children's future, emphasising that there is no systemic support that would enable them to pay for their children's education, and no benefits available as they search for employment. Children born out of rape still struggle in getting their status recognised and face numerous administrative obstacles and stigmatisation. CRSV does not solely impact survivors and their families - it has long-lasting consequences for the whole community and society. In BiH, CRSV has been used as a weapon of war seeking to destroy or permanently damage communities, for instance by disturbing social relationships and community dynamics.



Survivors' Perspectives

Needs and Expectations

Although BiH has established a domestic reparations programme including CRSV survivors through the adoption of a legal framework for administrative reparations, it is still far from providing adequate, prompt and effective reparation to survivors according to international standards.

The fragmented nature of the legal framework (with conditions for accessing a range of guaranteed rights being regulated differently in Republika Srpska, Federation of BiH and Brčko District), is hindering survivors' efforts to claim their rights. Survivors often emphasise the responsibility of the State to support them and urge for a state-wide reparations scheme that would enable all survivors to access adequate support and equal rights. Survivors believe that the existing legal framework is inadequate, and does not provide for adequate support for housing, health care (especially access to rehabilitation services), employment opportunities, or support for survivors' children, including in terms of education and employment. Financial struggles faced by survivors are one of the main obstacles to effective reintegration and rehabilitation. Many survivors rely only on the insufficient monthly benefits granted through the legal framework. Many CRSV survivors cannot afford the medication they need, cannot take care of their families and cannot meet even their basic needs.

Many of the survivors are dissatisfied with the level of prosecution of war crimes in BiH, which they deem to be low and inconsistent, highlighting that many perpetrators still live freely both abroad and in BiH, while survivors and their families are deprived of justice. Although the courts have adopted the ground-breaking practice of awarding compensation to survivors in criminal proceedings, it is only accessible to those who have testified in the proceedings. Many survivors fear that they will not live to see their perpetrators prosecuted and that they will therefore not have the opportunity to seek redress through such proceedings.

"I would say that a large number of us will not live [long] enough to testify in the trial and so we will not get that compensation from the perpetrator. We also have a lot of survivors who will never be able to recognise their perpetrators. It is not fair, those survivors should also obtain compensation. It would be fair that some fund exists, some at least minimal financial help for those who cannot recognise the perpetrators, who cannot go through the court process." - Survivor statement from a focus group held in Prokosovići, 4th of June 2021.

The vast majority of survivors feel abandoned and betrayed by the system because of the practice of invoking the statute of limitations in respect of non-pecuniary damages in civil proceedings against the State of BiH and its entities, the Federation of BiH and Republika Srpska. This results in dismissal of all civil lawsuits and exerts further financial pressure on victims. Victims often feel disappointed and identify this practice as *"additional punishment for them because they've survived"*.



Survivors' Initiatives

After the end of the war, the first associations of victims of war, including CRSV survivors, were formed with the aim of strengthening the network of survivors, empowering them to discuss the traumas suffered and to advocate for their rights. Many such associations are very active in providing or facilitating support to survivors during the court proceedings, the process of obtaining the status of victim of sexual violence and are helping members to get needed psychological support. Some particularly noteworthy initiatives of these associations are as follows:

The film "[Grbavica](#)", which came out in 2006, represented a major breakthrough in sensitising the public both within BiH and abroad about the sexual violence committed in BiH and the impact it had on survivors. A campaign advocating for the rights of CRSV survivors entitled "[For the dignity of survivors](#)" was organised by civil society organisations and victims' associations and activists in parallel to the release of the film. The campaign also played an important role in raising awareness and contributed significantly to [the 2006 changes](#) to the Law on Protection of Civilian Victims of War and Protection of Families with Children of FBiH, ensuring that victims of wartime sexual violence were recognised as a special category and granted rights accordingly.

Victims' associations in Republika Srpska also participated in advocating for adoption of the [Law on the Protection of Victims of Torture](#) of RS, and the Association of Women Victims of War was consulted in preparing the new law.

The association "[Forgotten Children of War](#)" is another association which has worked on improving the rights of children born out of rape. Due to stigmatisation and the lack of comprehensive legal protection afforded to children born out of rape in the BiH legislative system, this association conducts initiatives aimed at improving their position, one of the first ones being "[Name of one parent](#)" initiative. All administrative forms required to issue personal documents require the father's name to be stated, which is a problem when the name of the father is not known, and so the initiative advocated for the right to include only the mother's name. The initiative led to a change in process being implemented in several municipalities, so that only the name of one parent is sufficient. Following the success of this first initiative, this newly formed association continues to work on initiatives to change the legislative framework so that children born out of rape are recognised as a separate category and afforded specific rights accordingly.



Reparations

IN THEORY

Judicial remedies

- Under Article 193 of BiH Criminal Procedure Code (CPC) injured parties may file compensation claims in criminal proceedings for pecuniary and non-pecuniary damages stemming from criminal offenses. The CPC obliges prosecutors to “gather evidence regarding the compensation claim”.
- Survivors can initiate civil litigation for pecuniary and non-pecuniary damages against the FBiH and RS based on Law on Obligations.

Administrative remedies

- Recognition of the status of victim is regulated on three different levels of government: in the Federation of BiH, the Republika Srpska and the Brčko District. In FBiH there is the Law on Social Protection, Protection of Families with Children of the FBiH and in BD there is the Decision on Protection of Civilian Victims of War. Both in FBiH and BD beneficiaries are civilian victims of war, including CRSV victims. In RS there is the Law on the Protection of Victims of Torture which regulates the status and rights of victims of torture, including CRSV victims. There is no unified legal framework at state level to regulate the status of victims. Obstacles and shortcomings of the current fragmented legal framework include the access to the right to a monthly pension, which depends on the residence of the survivor. In addition, different levels of government pay different amounts of monthly pension. Similarly, access to the right to health care is limited to those available in the place of residence.

International remedies

- In August 2019, the UN Committee against Torture issued a landmark decision in a case of Ms. A (a CRSV victim) against BiH, recommending that BiH ensures that Ms. A obtains “prompt, fair and adequate compensation”, receives medical and psychological care immediately and free of charge and receives an official public apology. The Committee further recommended that BiH establish an effective reparation scheme at national level to provide all forms of redress to victims of war crimes, including victims of sexual violence, and that it adopt a legal framework that clearly defines criteria for being granted the status of victim of war crimes, including sexual violence and sets out the specific rights and entitlements to be provided to victims.
- The RS Law on the Protection of Victims of Torture was adopted in 2018 to set out new rights specific to victims of torture, including victims of conflict-related sexual violence.

IN PRACTICE

Judicial remedies

- Many prosecutors have consistently eschewed their duties under the CPC, and survivors face enforcement complications due to insolvency of perpetrator. This, coupled with the fact that prosecutors do not take an active role and conduct timely investigations of property of perpetrators in order to facilitate the effective payment of compensation, results in survivors not receiving the compensation they are due.
- In 2015, BiH courts set the [ground-breaking precedent](#) of awarding damages to wartime survivors in several criminal cases. That said, only victims who testified were able to seek compensation for non-pecuniary damages in criminal proceedings.
- Some courts still refer survivors with the status of injured party in criminal proceedings to seek compensation in civil litigation. Unlike criminal proceedings, there are no identity protection measures in civil litigation, causing survivors who have been granted identity protection measures in criminal proceedings to withdraw or not file their claim in subsequent civil proceedings.
- BiH courts are dismissing compensation claims filed in civil proceedings under the statute of limitation and, imposing the ‘loser pays’ rule on survivors in respect of high court costs, which again detracts survivors from pursuing their claims.

Administrative remedies

- The fragmented legal framework results in unequal procedures to access rights and unequal treatment of victims of CRSV within the territory of BiH. Recognition of the status of victim and rights resulting from that status depend on the place of residence of each survivor.
- The deadline for lodging an application as a victim of torture under the RS [Law on the Protection of Victims of Torture](#) is 5 years from adoption of the law, and there are no guarantees of identity protection under such law for victims of sexual violence who had previously been granted identity protection measures in criminal proceedings.

International remedies

- Reparation measures recommended in 2019 by the [UN Committee against Torture](#) have yet to be implemented.



Opportunities

One challenge faced by survivors is the practice of rejecting compensation claims submitted by war crimes victims in civil proceedings and obliging them to pay legal costs in application of the 'loser pays' rule. In June 2019, [TRIAL International](#), together with the Yale Law School Lowenstein International Human Rights Clinic, submitted a [General Allegation](#) to several UN special procedures¹, asking them to condemn this practice and to issue recommendations to BiH for it to be abandoned.

As the UN Special rapporteur on the Promotion to truth, justice, reparation and guarantees of non-recurrence is planning to visit BiH in November 2021, the coming weeks provide an ideal opportunity to address this matter.

Another important opportunity for improvement of access to reparation is implementation of the UN Committee against Torture decision of August 2019 which is being followed closely by several national and international actors. In August 2021, a working group of the BiH Ministry for Human Rights and Refugees was tasked to devise an implementation plan by November 2021. This plan must address several survivor rights, including public official apologies, rehabilitation measures and payment of compensation awarded in criminal proceedings. This could also provide strong impetus for harmonisation of the different provisions regulating the status and rights of victims of CRSV across BiH.

The positive reaction from several municipalities to the initiative by the Forgotten Children of War Association is a sign of willingness of some key stakeholders to collaborate and respond to the needs of survivor' and their children. The strong, positive and much needed energy of these young people provides a further opportunity to improve access to reparations for survivors and their children.



Key Challenges

- The financial situation of many survivors makes meeting basic needs difficult, especially where monthly benefits are insufficient. Many survivors still lack systemic support to access adequate housing, health care, rehabilitation services and employment.
- Survivor's children lack support especially in accessing education and employment.
- Children born out of rape lack institutional support and face ongoing challenges in having their status recognised and administrative barriers removed.
- Fragmented legal framework result in unequal treatment of victims across BiH.
- The statute of limitations for civil claims and imposition of high legal fees prevents victims from obtaining redress, unless their case is the subject of criminal proceedings.
- Where perpetrators are found guilty and compensation is awarded to the victim, such compensation is unlikely to be paid where the perpetrator does not have sufficient assets. Where this is the case, there is no alternative process through which a survivor may be granted financial reparations.
- Social stigma remains widespread and prevents survivors from speaking about their experiences or seeking justice and reparations.



"We demand our rights and when we exercise any right, we are happy, we have succeeded. Let's keep fighting, step by step."

© TRIAL International, 11th June 2021. Photo from the second focus group in Prokosovići taken in accordance with the Consent given by the survivors.
Survivor statement from the first focus group held in Prokosovići, 4th June 2021.

¹The Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.



Preliminary Recommendations

- BiH should adopt legislative and other measures necessary to guarantee that CRSV survivors have equal access to effective remedies throughout BiH regardless of their place of residence.
- Republika Srpska Government/Parliament should extend the five-year deadline since the adoption of the law in 2018 for making an application under the Law on the Protection of Victims of Torture of RS and amend the Law to broaden the type of documentation that can serve as evidence and ensure that survivor identity is not disclosed during the proceedings.
- BiH should ensure that ex-combatants, who survived CRSV and other CRSV survivors who have been affiliated with an army receive equal access to reparations along with other victims.
- BiH should ensure that CRSV survivors are entitled to rehabilitation. In the Federation of BiH and the Brčko District, this requires relevant legal provisions to be amended or additional bylaws to be adopted. In Republika Srpska, the legal provisions related to rehabilitation need to be implemented.
- The Government of BiH should guarantee that reparation measures recommended by the Committee against Torture in its 2019 decision on the case A. v. BiH are fully implemented without delay.
- Prosecutors at all levels should work on facilitating the implementation of compensation awards and that both State and entity level courts prosecute CRSV crimes and award compensation in criminal proceedings accordingly.
- The Government of BiH should ensure that victims receive compensation awarded in criminal proceedings. This means that even in cases where the perpetrator fails to provide reparations, the government must step in to provide the compensation awarded to victims.
- The Government of BiH should ensure that application of statute of limitations to civil claims for non-pecuniary damage is not applied in CRSV cases and that legal fees are waived for victims whose claims have been rejected as a result of application of the statute.
- The Government of BiH should ensure that children born out of rape are included in reparation frameworks as a special category with specific needs.
- Amend the Federation of BiH, Republika Srpska and Brčko District civil procedure laws so that the identity of survivors who have been granted identity protection in criminal proceedings is also protected in civil proceedings when seeking redress.



Next Steps

Urgent action by the international community, BiH civil society organisations, and State authorities is needed to assist, support and sustain survivors' efforts to obtain the implementation of the above recommendations and achieve recognition and effective reparation. These include:

- Support by international community to survivor-led or survivor-centred initiatives led by NGOs and their advocacy to duty bearers at national level;
- Follow-up and advocate strongly for the implementation of all recommendations issued by UN human rights treaty bodies and special procedures concerning survivors' access to reparations;

Follow-up and advocate strongly for immediate implementation of the 2019 UN Committee against Torture's recommendations and ensure that implementation support is provided as needed;

- Voice clear international community condemnation of the practice of obliging victims to pay high legal costs where claims are rejected.