



A GLOBAL FUND FOR SURVIVORS OF
CONFLICT-RELATED SEXUAL VIOLENCE

BOSNIA AND HERZEGOVINA STUDY ON OPPORTUNITIES FOR REPARATIONS FOR SURVIVORS OF CONFLICT- RELATED SEXUAL VIOLENCE

We raise our voices



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EXECUTIVE SUMMARY

It is estimated that approximately 20,000 women and men were raped or sexually abused during the 1992-1995 war in Bosnia and Herzegovina (BiH). Are conflict-related sexual violence survivors satisfied with reparations made available to them after the war ended? The fact that almost three decades have passed since the end of the war would lead most people to believe that BiH has established an effective reparations scheme to adequately address the needs of survivors. However, as the “We raise our voices” — Bosnia and Herzegovina Study on Opportunities for Reparations for Survivors of Conflict-Related Sexual Violence (the Study) aims to show — much work still remains to be done.

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

It is difficult to determine where conflict-related sexual violence 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. Conflict-related sexual violence 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 conflict-related sexual violence 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.

Conflict-related sexual violence in BiH has had long-lasting psychological, physical, economic and social impacts on survivors and their families. Many survivors still suffer from trauma associated with these crimes, 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 more than 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 help. Survivors 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 also to a fear of seeking justice and reparation. Many survivors, and especially men, feel a sense of 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. 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. Conflict-related sexual violence does not solely impact survivors and their families—it has long-lasting consequences for the whole community and society. In BiH, conflict-related sexual violence has been used as a weapon of war seeking to destroy or permanently damage communities, for instance by disturbing social relationships and community dynamics.

BiH 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 rights and the range of rights being regulated differently in Republika Srpska, Federation of BiH and Brčko District the three administrative units in this country), 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 conflict-related sexual violence 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 from the perpetrators. The

vast majority of survivors feel especially 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, which some of them had initiated primarily against the Federation of BiH or Republika Srpska.

In the absence of a state-wide reparations scheme that would enable all survivors to access adequate support and equal rights, victims rely on the existing complex system of social protection support, as well as on individual proceedings before criminal and civil courts. An administrative collective reparations programme has never been established through which all survivors in BiH would get easy access to compensation and other necessary reparation measures, under equal conditions and with the same level of protection of rights. Therefore, survivors have to navigate a complex array of social allowances, which are inconsistent due to differences in legislation in the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District of BiH – a situation that ultimately leads to an unequal treatment of victims depending on their place of residence.

Existing legal provisions are lacking in certain aspects. For instance, the deadline for lodging an application as a victim of torture in Republika Srpska is five years from adoption of the law (and is ending in 2023), 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. Obstacles and shortcomings of the current fragmented legal framework are also evident when it comes to the access to the right to a monthly pension. Similarly, access to the right to health care differs based on the place residence, and most notably under current legal provisions in Brčko District BiH, survivors are not provided with psychological support.

Furthermore, under the current legislation in Federation of BiH and Brčko District, survivors are not provided with medical spa therapy, which is recognised as an important measure of rehabilitation by both the victims and medical and psychiatric experts. The status and rights of children born of rape in BiH are not regulated as is the case with civilian victims of war or children of veterans with war-related disabilities. BiH still lacks systematic solutions to provide support measures for their education, employment or housing, and through elimination of other difficulties that negatively affect their daily lives.

Only a small number of around 1000 conflict-related sexual violence survivors are obtaining some form of reparations, due to the multitude of obstacles that are discouraging them from seeking or hindering them from accessing their rights. Also, certain categories of conflict related sexual violence survivors are excluded under current legal provisions, such as survivors that are living abroad and ex-soldiers and other persons who experienced sexual violence while working for the military. Many survivors find that available reparations are either not tailored to their real needs or do not adequately compensate or otherwise repair the harms suffered.

Survivors have also tried or are still trying to access compensation through court proceedings, and have encountered a number of difficulties, both in civil and criminal proceedings. 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. However, many prosecutors have consistently eschewed their duties, and survivors face enforcement complications due to insolvency of perpetrator.

This, coupled with the fact that some 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. Furthermore, 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.

Furthermore, growing number of victims in BiH are being obliged to pay thousands of euros of court fees to the very entities they had initially sued, asking them to compensate for the harm they suffered, but their claims were dismissed in application of statute of limitations. As a result, their assets or part of their income (if they have any) are being confiscated from those who in most cases are already in a very bad socio-economic situation, often on the verge of poverty, forcing them to take out loans or seek humanitarian aid.

Bosnia and Herzegovina needs to take proactive and decisive steps in order to ensure survivors of conflict related sexual violence obtain the reparations they deserve. That is why representatives of the governments at the level of BiH need to establish an efficient and comprehensive reparations framework to ensure the same level of protection of rights, equal benefits, and equal criteria for accessing rights for all victims of conflict-related sexual violence throughout BiH; they need to ensure that reparation programmers are tailored to their situation and needs, as expressly requested by survivors.

BiH already has well-designed plans on how this can become a reality, and that is why it needs to adopt the Transitional Justice Strategy and the Programme for the Protection of Victims of Conflict-Related Sexual Violence, that were prepared in the past. Furthermore, children born of wartime rape and persons who survived conflict-related sexual violence as members of military formations, or as persons who performed other tasks for the army need to be included in reparation frameworks as well.

When it comes to reparations that can be awarded to survivors through court proceedings, there is also room for improvement. BiH need to ensure that victims effectively 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 and prosecutors at all levels should work on facilitating the implementation of compensation awards and that courts prosecute conflict related sexual violence crimes and award compensation in criminal proceedings accordingly.

Moreover, statute of limitations to civil claims for non-pecuniary damage should not apply in these cases and legal fees should be waived for victims whose claims have been rejected as a result of application of the statute. Survivors need to be provided with effective access to free legal aid and equal access to justice, regardless of where they reside and before which court they testify. Also, survivors and their families need to be provided with psychological help that is tailored to their needs, as well support measures in employment, housing and education that can ensure long-term prosperity and economic empowerment.



ACRONYMS

ABiH	Army of Bosnia and Herzegovina
BiH	Bosnia and Herzegovina
Study	Bosnia and Herzegovina Study on Opportunities for Reparations for Survivors of Conflict-Related Sexual Violence
BDBiH	Brčko District of BiH
CRSV	Conflict related sexual violence
CCBiH	Constitutional court of Bosnia and Herzegovina
CBiH	Court of Bosnia and Herzegovina
CC	Criminal Code
CPC	Criminal Procedure Code
ECtHRN	European Court of Human Rights
FBiH	Federation of Bosnia and Herzegovina
GSF	Global Survivors Fund
ICTY	International Criminal Tribunal for the former Yugoslavia
IOM	International Organization for Migration
MHRR BiH	Ministry of Human Rights and Refugees of BiH
NGO	Non-governmental organization
OSCE	Organization for Security and Co-operation in Europe
PTSD	Post-traumatic stress disorder
PSVI	Preventing Sexual Violence in Conflict Initiative
RS	Republika Srpska
SDS	Serb Democratic Party
SFRY	Socialist Federal Republic of Yugoslavia
TAIEX	Technical Assistance and Information Exchange
UN	United Nations
Convention against Torture	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
OHCHR	United Nations Commission on Human Rights
UNCAT	United Nations Committee against Torture
UNHRC	United Nations Committee on Human Rights
UNCEDAW	United Nations Committee on the Elimination of Discrimination against Women
UNFPA	United Nations Population Fund
UNSC	United Nations Security Council



I. BACKGROUND AND METHODOLOGY

1. About the project, project partners, authors and acknowledgments

1.2. About the project partners



1.1. About the project

The Study is part of a global research, coordinated and implemented in 26 countries around the world by the Global Survivors Fund (GSF). The subject of this global study is the scale of sexual violence crimes in the world and the obstacles that survivors face in their attempts to exercise the right to reparations; the ultimate goal of the Study is to provide specific recommendations so that reparations are properly designed and accessible to survivors.¹

In Bosnia and Herzegovina (BiH), the Study is being conducted by TRIAL International, a non-governmental organisation (NGO) active in BiH since 2007 in fighting impunity for international crimes and supporting victims, specifically survivors of conflict-related sexual violence, families of missing persons and former camp detainees in the quest for justice and access to reparations. In addition to providing free legal aid to war victims and strategic human rights litigation, the organisation also advocates for systemic solutions, such as capacity building of local stakeholders and improving the legal framework and case law.²

During the research and relevant data collection, TRIAL International collaborated with a local partner organisation Vive žene, an NGO that provides psychosocial assistance and support to victims of war, torture and violence, and works to strengthen the capacity of other organisations and institutions and to improve legislation and restore human rights.³

TRIAL International is a non-governmental organisation fighting against impunity for international crimes and supporting victims in their quest for justice. The organisation provides legal aid, submits cases, develops local capacities and advocates the human rights agenda. TRIAL International has been active in Bosnia Herzegovina (BiH) since 2007 and has opened its local office in Sarajevo in 2013. For more information visit <https://trialinternational.org>

TRIAL International – Office in BiH aims to fight against impunity and to promote transitional justice in BiH by improving access to justice for victims of grave crimes and ensuring that they obtain the redress to which they are entitled. In supporting war crimes victims in BiH, the organization focuses on vulnerable groups, including sexual violence survivors, the families of missing persons and former camp detainees. For more information visit <http://trial.ba>



The Association of Citizens of Viva Women – Centre for Therapy and Rehabilitation is a leading non-governmental organization for providing psychosocial assistance and support to persons who have experienced traumatic experiences of war, torture and violence. The association was founded in early 1994 to ensure the reception, care and rehabilitation of women and children victims of war

¹ For more on the GSF's Global Reparations Study, see: <https://www.globalsurvivorsfund.org/guide>.

² For more on TRIAL International, see: <https://trial.ba/> and <https://trialinternational.org/>.

³ For more on Vive žene, see: <https://vivezene.ba/o-nama/>.

persecution. For twenty-seven years, the association has been continuously working to eliminate the consequences of war trauma, prevent all forms of violence, build multi-ethnic cooperation and respect for human rights in Bosnia and Herzegovina. For more information visit <https://vivezene.ba/o-nama/>



GSF was launched in October 2019 by Dr Denis Mukwege and Ms Nadia Murad, Nobel Peace Prize laureates 2018. Its mission is to enhance access to reparations for survivors of conflict-related sexual violence around the globe, thus seeking to fill a gap long identified by survivors. GSF acts to provide interim reparative measures in situations where states or other parties are unable or unwilling to meet their responsibilities. GSF advocates also for duty bearers, as well as the international community, to develop reparations programmes, and provides expertise and technical support to guide states and civil society in the design of reparations programmes. GSF's survivor-centric approach is the cornerstone of its work. For more information, visit www.globalsurvivorsfund.org.

1.3. About the authors

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Lamija Tiro, at the time of writing of this Study, was a Legal Adviser of TRIAL International, with extensive education and experience of working in the field of human rights and rule of law. Ms. Tiro holds a bachelor degree of Law at University of Sarajevo and master's degree in Human Rights and Democracy at University of Sarajevo/University of Bologna.

2. Methodology

During the preparation of the BiH Study on Opportunities for Reparations for Survivors of Conflict-Related Sexual Violence, data were collected and analysed, and quantitative and qualitative methods were used to make the research comprehensive. First, an analysis was conducted of existing and relevant materials (such as reports and similar documents) dealing with conflict-related sexual violence and reparations,⁴ as well as of relevant national and international legal standards. During the research we relied, as much as possible, on relevant existing sources of information, through a systematic analysis of all available data and to supplement them with additional findings that were obtained during the process.

Furthermore, for the research to be inclusive and to offer different points of view, interviews with stakeholders who deal with conflict-related sexual violence in their daily work were conducted and they made a significant contribution. Therefore, during the work on the project and information gathering on the current position of survivors, we spoke with representatives of the Prosecutor's Office of BiH, Witness Support Section at the Court of BiH, Ministry of Human Rights and Refugees of BiH (MHRR BiH), FBiH Ministry of Labour and Social Policy, Association Medica from Zenica,

⁴ During the preparation of the Study, we relied on the findings of reports, research, analysis and similar documents on conflict-related sexual violence, which included interviews with survivors and addressed various aspects of transitional justice and reparations, including identifying recommendations for improving access to reparations. These documents were prepared by local non-governmental organisations such as Medica Zenica, as well as Amnesty International, International Organization for Migration (IOM), Organization for Security and Co-operation in Europe (OSCE), United Nations High Commissioner for Refugees (UNHCR), United Nations Population Fund (UNFPA), United Nations Development Programme (UNDP), UN Women.

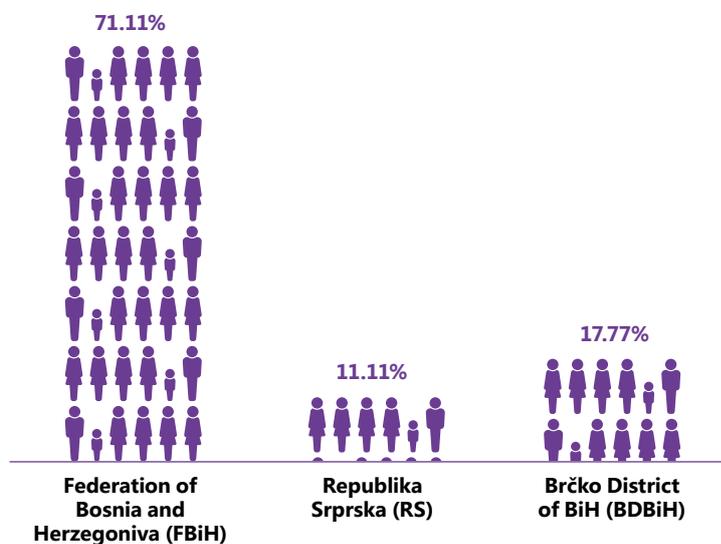
Association of Prijedor Women Izvor, Association Forgotten Children of War, Association United Women, Foundation Lara Bijeljina, and a neuropsychiatrist and human rights activist working with victims of conflict-related sexual violence.⁵

An important goal of this research was to take into account the perceptions and expectations of survivors of conflict-related sexual violence with respect to reparations; accordingly, focus groups were organised, as well as individual interviews with survivors from all over BiH. During focus groups and interviews, participants were informed of the types of reparations that exist in BiH through a session on the concept of reparations in order to provide them with the opportunity to recognise and identify the forms of reparations that meet their needs. Furthermore, a questionnaire prepared by GSF and adapted for research in BiH by TRIAL International and *Vive žene* was used during the research.

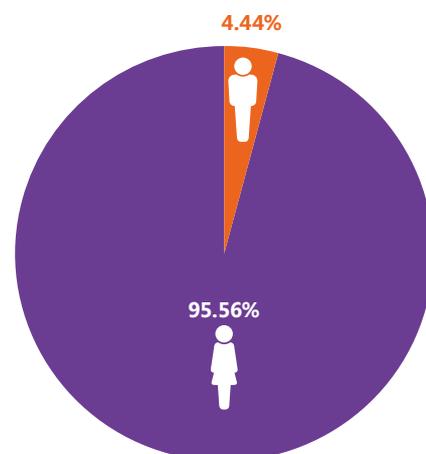
The questionnaire contained open-ended questions, so that participants could articulate their needs and requirements without limitations. Also, during the research, an analysis was made of participants' demographic profile, which was additionally used to contextualise the specific needs of the survivors engaged in the study.

A total of 45 survivors participated in focus groups and individual interviews. In percentages, 71.11% of focus group participants are from the Federation of Bosnia and Herzegovina (FBiH), while 11.11% are from the Republika Srpska (RS) and 17.77% from the Brčko District of BiH (BDBiH). In terms of gender representation, 4.44% of survivors are men, while the remaining 95.56% of survivors are women.

PERCENTAGE OF SURVIVOR PARTICIPANTS



GENDER OF SURVIVOR PARTICIPANTS



Numbers correspond to a sample of 45 survivors who participated in interviews and focus group discussions for the BiH Reparations Study

⁵ To present the opinions of relevant stakeholders from the entire BiH, we conducted interviews with: Ahmed Mešić (Prosecutor's Office of BiH), Saliha Đuderija (Ministry of Human Rights and Refugees of BiH), Alma Taso Deljković (Witness Support Section of the Court of BiH), Esmā Palić (FBiH Ministry of Labour and Social Policy), Sabiha Husić (Medica Zenica), Amra Delić (neuropsychiatrist), Seida Karabašić (Association of Prijedor Women Izvor), Mira Smajlović (Court of BiH), Ajna Jusić, Lejla Damon and Jelena Čajić (Association Forgotten Children of War), Gorica Ivić and Nada Golubović (United Women Foundation) and Radmila Žigjić (Lara Foundation Bijeljina). We also held additional consultations with psychologist Tanja Tankosić-Girt. Although in most cases we received information from the relevant ministries that we contacted during the study (at the state level, and in FBiH and BDBiH), unfortunately, even after several attempts, we were unable to obtain information from the RS Ministry of Labour, War Veterans and Disabled Persons' Protection. Consequently, in order to adequately present the situation in this entity, we used publicly available information, as well as information provided to us by representatives of other bodies and the victims themselves.

Of the total number of focus group participants, **13.33%** of the survivors were minors at the time of the sexual violence crime. Also, in addition to activities with survivors of conflict-related sexual violence, we conducted interviews with three children born of war to document their experiences and needs. Based on the data thus collected, the study presents key statistical and other data that illustrate the perceptions of survivors regarding reparations; based on the analysis of the needs and expectations of the survivors, the most relevant recommendations have been formulated.

During the implementation of activities that included working with survivors of conflict-related sexual violence, great emphasis was placed on respecting the sensitivity of trauma. Most of the people engaged in the research have many years of experience working with survivors, and all those involved complied with the principles of the Murad Code, a global code of conduct for safe, effective and ethical engagement with CRSV survivors developed by the Institute for International Criminal Investigations, the Preventing Sexual Violence in Conflict Initiative (PSVI)

and Nadia's Initiative.⁶ Also, to protect the identity and respect the confidentiality of participants, their names are not mentioned in this study.

Focus groups and interviews were conducted in the period from April to August 2021. The global COVID 19 pandemic slowed down the organisation and implementation of activities to some extent, but did not represent an insurmountable obstacle, bearing in mind that during the organisation of the different focus groups, measures and recommendations to prevent the spread of the virus issued by the competent state institutions, as well as the World Health Organisation, were strictly observed. In addition, a number of individual interviews were conducted online. However, during the implementation of the activities, the underrepresentation of men who survived conflict-related sexual violence emerged as an obstacle – men are less likely than women to report or talk about these crimes. To overcome this obstacle, we tried to hold additional interviews with interested men and give them the opportunity to openly share their experiences and needs, without the pressure that may arise when talking about this topic in a group setting.



Of the total number of focus group participants, **13.33%** of the survivors were minors at the time of the sexual violence crime.

6 See 'Draft Murad Code of Conduct for Investigating and Documenting Conflict-Related Sexual Violence' (June 2020) <<https://www.muradcode.com/draft-murad-code>>.

II. INTRODUCTION

26 years after the war, BiH has not yet established an adequate reparations scheme for survivors of conflict-related sexual violence. In the absence of a solution at the state level, survivors have to navigate a complex array of social allowances,⁷ which due to the inconsistency of legislation in FBiH, RS and BDBiH ultimately lead to unequal treatment of victims within BiH based on their place of residence.⁸ Some of the survivors are trying to obtain compensation through court proceedings, but due to numerous obstacles, there is only a small number of victims who manage to exercise their rights in this way.⁹ For this reason, the aim of this study is to consolidate the views of survivors on the process of obtaining reparations, present their previous experiences and needs, and analyse the existing legal framework, indicating its gaps.

The biggest contribution of this study are the recommendations that are primarily intended for decision-makers, who can directly address the problems that the study recognises. The research is also intended as an advocacy tool for survivors of conflict-related sexual violence, victims' associations, civil society organisations and the general public, with the aim of jointly creating the necessary pressure through clearly defined requests that survivors must be given access to a wider range of rights.

The study begins with an overview of the context of sexual violence committed in BiH during the war (Chapter III), where, using primarily the analysis of judgments, we identify the patterns of this crime and present the profiles of survivors and perpetrators. Chapter IV presents the important perceptions, needs, and priorities that survivors of conflict-related sexual violence highlighted during focus groups and interviews, which we placed in the context of other, earlier research.

Chapter V provides an overview of international standards and potential international mechanisms for the protection of the right to reparations, as well as the existing national legal framework and practices relevant to victims of sexual violence and the exercise of their right to reparations. Chapter VI, on the other hand, offers an overview of the current implementation of this right for survivors and points out the shortcomings of the current national legislation and the obstacles that survivors face. Chapter VII offers a comprehensive overview of key stakeholders, opportunities, and initiatives that work to contribute to the struggle to exercise the right to reparations for survivors, but also recognises the greatest threats to this goal. The report concludes with the most important recommendations that emerged during the process of this study (Chapter VIII), and with the conclusion and identified steps for further action (Chapter IX).



⁷ Amnesty International "We need support, not pity": Last chance for justice for Bosnia's wartime rape survivors (2017) 11.

⁸ Initiative for Monitoring the EU Integration of BiH, 2019-2020 'Alternative Report on the Application of Bosnia and Herzegovina for the European Union Membership: Political Criteria' (2021) 49.

⁹ *Ibid* id 49.



III. CONFLICT-RELATED SEXUAL VIOLENCE

| 3. Context

Understanding the historical context of the war in BiH is a necessary first step to adequately represent the scale and consequences of conflict-related sexual violence crimes committed in this territory during the 1992-1995 war, which was preceded by the break-up of the Socialist Federal Republic of Yugoslavia. As one of the largest states in the Balkans, Yugoslavia was comprised of six republics (Slovenia, Serbia, Croatia, BiH, Montenegro and Macedonia) and two autonomous provinces within the Republic of Serbia (Kosovo and Vojvodina).¹⁰

During the late 1980s and early 1990s, Yugoslavia experienced a period of political and economic crisis. As state power weakened on the one hand, nationalism rose, a clear indication of which was the proliferation of political parties who advocated the outright independence of such republics.¹¹ In 1991, Yugoslavia entered the greatest crisis in its history.¹² After the then republics of Croatia, Slovenia and Macedonia declared independence in the second half of 1991, a referendum was held in BiH in February 1992, during which more than 60

percent of the population voted for independence (the Serb population in BiH largely boycotted the referendum).¹³ During that period, the national structure of BiH consisted of about 43 percent Muslims, 33 percent Serbs and 17 percent Croats, and about seven percent of other nationalities¹⁴ who shared common power. However, the political turmoil that followed BiH's declaration of independence in March 1992 soon escalated into war, and civilians of all nationalities fell victim to horrific crimes.¹⁵ The General Framework Agreement for Peace in BiH, better known as the Dayton Peace Agreement, stopped the war, but war crimes, destruction and a large number of casualties left immense consequences on the population of BiH.

Between 1992 and 1995, more than 100,000 people were killed, of whom approximately 65 percent were Muslims, 22 percent Serbs, nine percent Croats and about five percent Others.¹⁶ A total of 92 percent of the victims killed were men and eight percent women.¹⁷ Over two million people, more than half of the pre-war population, were forced to leave their homes.¹⁸ Over 30,000 people have been reported missing as a result of the war in BiH¹⁹, and more than

10 Dušan Bilandžić, *Historija Socijalističke Federativne Republike Jugoslavije* [The History of the Socialist Federal Republic of Yugoslavia] (First Edition, Školska knjiga Zagreb, 1985) 40 – 91.

11 International Criminal Tribunal for the former Yugoslavia, 'Conflicts' < <https://www.icty.org/en/about/what-former-yugoslavia/conflicts> > Accessed 6 August 2021.

12 Toni Milanović, 'Križa 1980-ih u Jugoslaviji i međunarodni pogledi' [The Yugoslavia Crisis in the 1980s and International Views] (2011) 4(4) *Rostra: Časopis studenata povijesti Sveučilišta u Zadru* 85-91.

13 Admir Mulaosmanović, 'Ka putu ka nezavisnosti – Referendum u Bosni i Hercegovini' [Towards Independence – Referendum in Bosnia and Herzegovina] (2012) 10 *Historijska traganja* 223-225.

14 FBiH Bureau of Statistics, '1991 Census' < <http://fzs.ba/index.php/popis-stanovnistva/popis-stanovnistva-1991-i-stariji/> > Accessed 6 August 2021.

15 Damir Banović, Saša Gavrić and Mariña Barreiro Marino, *The Political System of Bosnia and Herzegovina Institutions – Actors – Processes* (Springer, 2020) 1-8.

16 Jan Zwierchowski and Ewa Tabeau, 'The 1992-95 War in Bosnia and Herzegovina: Census-Based Multiple System Estimation of Casualties' Undercount' (Conference Paper for the International Research Workshop on The Global Costs of Conflict 2010) 17-20.

17 Ibid 20.

18 SeConS and UNFPA, 'Population Situation Analysis in Bosnia and Herzegovina' (2019) 60.

19 International Commission on Missing Persons, *Bosnia and Herzegovina Missing Persons from the Armed Conflicts of the 1990s: A Stocktaking* (International Commission on Missing Persons 2014) 11.

7,000 are still missing.²⁰ Particularly infamous camps were located in Omarska²¹, Trnopolje²², Čelebići²³ and elsewhere.²⁴ It is estimated that about 20,000 victims were raped or sexually abused during the war.²⁵ The genocide of nearly 8,000 Bosnian Muslim men and boys in Srebrenica, declared a protected zone by the United Nations, is one of the darkest moments in human history.²⁶

FACT 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

Many complex issues, such as bringing perpetrators to justice and exercising the rights of survivors and their families – the subject of the analysis of this research – still remain unresolved or insufficiently implemented. Transitional justice mechanisms in BiH are deficient and prevent many war crimes survivors from enjoying their rights. The Dayton Peace Agreement ended the war, but also left BiH with one of the most complex power-sharing systems in the world. The complex and decentralised administrative

organisation directly affects the quality of political leadership and governance in BiH. As a result, citizens enjoy social, economic and other human rights differently depending on which part of the country's territory they live in.

The lack of political consensus on key issues, together with the shortcomings in the quality of governance policies, lead to inconsistent legislation and availability of services in the Federation of BiH, Republika Srpska and the Brčko District, and thus to unequal treatment of survivors. The systemic shortcomings described have a particularly adverse effect on vulnerable populations, such as victims of conflict-related sexual violence, who critically depend on the support provided by the government.²⁷ Although there have been some positive developments in prosecuting perpetrators and exercising the right to reparations for survivors of conflict-related sexual violence, progress remains slow and justice has not been served 26 years after the end of the war, creating a risk that victims, many of whom are older now, will not live to see it served.²⁸

4. Nature and scope of conflict-related sexual violence

4.1. Scale, scope, forms and pattern of crimes

The facts proven by the judgments of international and national courts, based on numerous documents and testimonies, tell the painful truth of conflict-related

20 Kemal Zorlak, 'Međunarodni dan nestalih: U Bosni i Hercegovini se još traga za 7.547 osoba' [International Day of the Victims of Enforced Disappearances: Bosnia and Herzegovina still searches for 7,547 persons] *Anadolu Agency* (Sarajevo, 28 August 2020) <<https://www.aa.com.tr/ba/balkan/me%C4%91unarodni-dan-nestalih-u-bosni-i-hercegovini-se-jo%C5%A1-traga-za-7547-osoba/1956272>> Accessed 6 August 2021.

21 *Prosecutor v Milomir Stakić* (Judgment) IT-97-24-A (22 March 2006).

22 Ibid.

23 *Prosecutor v Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo* (Judgment) IT-96-21-A (20 February 2001).

24 Serge Brammertz and Michelle Jarvis, *Prosecuting Conflict-Related Sexual Violence at the ICTY* (Oxford University Press 2016) 180-194.

25 Parliamentary Assembly of the Council of Europe, 'Resolution 1670 on sexual violence against women in armed conflict' (Adopted on 29 May 2009).

26 Radislav Krstić is the first person convicted by the ICTY of genocide. See *Prosecutor v Radislav Krstić* (Judgment) IT-98-33-T (2 August 2001) para 599.

27 Amnesty International, 'We need support, not pity: (n 7) 17-18.

28 Ibid 22.

Geographically, it is difficult to determine where this crime was most widespread, but numerous previous reports and case law mention areas in and around Višegrad, Foča, Rogatica, Prijedor, Zvornik, Vlasenica, Mostar, Konjic, Bijeljina, Brčko, and several other locations.



sexual violence in BiH and will also be used to present the characteristics of the crimes committed during the 1990s war. Sexual violence has been committed on a widespread scale in BiH, and was partly used as a weapon of war.²⁹ The violence was directed at both women and men.³⁰ All the warring parties, primarily members of the army, were responsible for these crimes.³¹ Sexual violence was systematic and institutionalised – as has been confirmed in the judgments of the International Criminal Tribunal for the former Yugoslavia (ICTY).³² As the analysis of ICTY judgments shows, conflict-related sexual violence was not an incidental aspect of the conflict – sexual violence was an integral part of it.³³ In addition, judgments of the Court of Bosnia and Herzegovina (CBIH) and the ICTY often indicate that the motive for sexual violence committed in BiH was ethnic intolerance.³⁴

“Sexual violence was perpetrated along ethnic lines to terrorise, punish, degrade, and humiliate. In particular, sexual violence was deeply interwoven into the process of ethnic cleansing perpetrated during forcible takeovers of towns and in prison settings, and used to instil fear into the civilian population, often resulting in civilians fleeing their homes as a result of a campaign of violent crimes.”³⁵

As mentioned earlier, although the exact number of people who were raped or sexually abused during the war is unknown, it is estimated that the number involves about 20,000 women and men.³⁶ It is impossible to produce precise statistics, given that the social stigma, which is often associated with these crimes, deters many survivors from talking about the brutal crimes and traumas they have suffered.

29 United Nations Commission on Human Rights, ‘Report by the Special Rapporteur Tadeusz Mazowiecki on the situation of human rights on the territory of the former Yugoslavia’ (10 February 1993) E/CN.4/1993/50 66.

30 Maja Šošarić, ‘War Victims and Gender-Sensitive Truth, Justice, Reparations and Non-Recurrence in Bosnia and Herzegovina’ (Impunity Watch 2012) 21.

31 Brammertz and Jarvis (n 24) 315.

32 Ibid 302-303.

33 Ibid 303.

34 Organization for Security and Co-operation in Europe (OSCE) Mission to Bosnia and Herzegovina, ‘Combating Impunity for Conflict-Related Sexual Violence in Bosnia and Herzegovina: Progress and Challenges, An analysis of criminal proceedings before the Court of Bosnia and Herzegovina between 2005 and 2013’ (2014) 10; Brammertz and Jarvis (n 24) 308-309.

35 Brammertz and Jarvis (n 24) 302.

36 See, for instance, Council of Europe ‘Report by Thomas Hammarberg Commissioner for Human Rights of the Council of Europe’ (29 March 2011) CommDH(2011)11 30.

In addition, the state did not take responsibility for conducting a comprehensive survey of the number of women and men who suffered sexual violence after the end of the war.³⁷ Geographically, it is difficult to determine where this crime was most widespread, but numerous previous reports and case law mention areas in and around Višegrad³⁸, Foča³⁹, Rogatica⁴⁰, Prijedor⁴¹, Zvornik⁴², Vlasenica⁴³, Mostar⁴⁴, Konjic⁴⁵, Bijeljina⁴⁶, Brčko⁴⁷, and several other locations.⁴⁸

The analysis of judgments and court-established facts of the ICTY recognises two types of circumstances in which conflict-related sexual violence was committed. First, sexual violence was committed during violent takeover of power and forcible transfer of civilians, more precisely after an attack by military forces, where soldiers would break into the homes of members of the target ethnic group.⁴⁹ Second, the majority of sexual violence cases took place in prison settings, as ICTY documentation shows.⁵⁰

Female and male victims endured the most brutal forms of sexual violence, including enslavement and captivity in brothels⁵¹, rape during interrogation⁵², sexual mutilation,⁵³ and other traumatic incidents. For a large number of survivors these were not one-off experiences, they were continuously exposed to violence during captivity.⁵⁴ Especially with respect to male survivors of conflict-related sexual violence, the analysis of judgments reveals a pattern of crime whereby violence was committed in a prison settings, in front of other detainees and often in the presence of members of the victim's community and/or family, as a form of punishment, belittlement, and demoralisation.⁵⁵

Men were, among other things, subjected to castration and forced sexual acts (in some cases incest) in the presence of members of their community.⁵⁶ Given the manner in which the crime of rape and sexual violence was perpetrated during the

37 Early estimates by the BiH government suggested the number of 50,000 victims of sexual violence although the accuracy of this estimate was never verified. See Amnesty International, 'Whose Justice? The Women of Bosnia and Herzegovina are Still Waiting' (2009) 5.

38 *Prosecutor v Mitar Vasiljević* (Judgment) IT-98-32-A (25 February 2004); *Prosecutor v Milan Lukić and Sredoje Lukić* (Judgment) IT-98-32/1-A (4 December 2012); *Prosecutor v Biljana Plavšić* (Sentencing Judgment) IT-00-39&40/1-S (27 February 2003); *Prosecutor v Momčilo Krajišnik* (Judgment) IT-00-39-A (17 March 2009).

39 *Prosecutor v Dragoljub Kunarac et al* (Judgment) IT-96-23 & IT-96-23/1-A (12 January 2002); *Prosecutor v Dragan Zelenović* (Judgment on Sentencing Appeal) IT-96-23/2-A (31 October 2007); *Biljana Plavšić* (n 37); *Momčilo Krajišnik* (n 37); *Prosecutor v Radovan Karadžić* (Judgment) MICT-13-55-A (20 March 2019); *Prosecutor v Ratko Mladić* (Judgment) IT-09-92-T (22 November 2017).

40 *Momčilo Krajišnik* (n 37); *Biljana Plavšić* (n 37); *Radovan Karadžić* (n 38); *Ratko Mladić* (n 38).

41 *Milomir Stakić* (n 21); *Biljana Plavšić* (n 37); *Prosecutor v Duško Sikirica et al* (Sentencing Judgment) IT-95-8-S (13 November 2001); *Prosecutor v Predrag Banović* (Sentencing Judgment) IT-02-65/1-S (28 October 2003); *Prosecutor v Duško Tadić* (Judgment) IT-94-1-A (15 July 1999); *Radovan Karadžić* (n 38); *Ratko Mladić* (n 38).

42 *Momčilo Krajišnik* (n 37); *Biljana Plavšić* (n 37); *Prosecutor v Vojislav Šešelj* (Judgment) IT-03-67-T (31 March 2016); *Prosecutor v Jovica Stanišić and Franko Simatović* (Judgment) IT-03-69-A (9 December 2015); *Radovan Karadžić* (n 38).

43 *Biljana Plavšić* (n 37); *Prosecutor v Dragan Nikolić* (Judgment on Sentencing Appeal) IT-94-2-A (4 February 2005); *Ratko Mladić* (n 38); *Prosecutor v Radovan Karadžić* (Judgment) IT-95-5/18-AR98bis.1 (11 July 2013).

44 *Prosecutor v Jadranko Prlić et al* (Judgment) IT-04-74 (29 November 2017); *Prosecutor v Ivica Rajić* (Judgment) IT-95-12-S (8 May 2006); *Prosecutor v Mladen Naletić and Vinko Martinović* (Judgment) IT-98-34-A (3 May 2006).

45 *Prosecutor v Zejnil Delalić et al* (Judgment) IT-96-21-T (16 November 1998).

46 *Momčilo Krajišnik* (n 39); *Biljana Plavšić* (n 37); *Ratko Mladić* (n 38); *Jovica Stanišić and Franko Simatović* (n 41); *Radovan Karadžić* (n 42).

47 *Momčilo Krajišnik* (n 37); *Prosecutor v Ranko Češić* (Judgment) IT-95-10/1-S (11 March 2004); *Radovan Karadžić* (n 42).

48 Brammertz and Jarvis (n 24) 388-422.

49 *Ibid* 304-306.

50 *Ibid* 306.

51 *Dragoljub Kunarac et al* (n 38).

52 *Prosecutor v Ante Furundžija* (Judgment) IT-95-17/1-A (21 July 2000).

53 *Duško Tadić* (n 40).

54 United Nations Security Council (UNSC), 'Final Report of the Commission of Experts Established pursuant to Security Council Resolution 780' (1994) S/1994/674 59.

55 Brammertz and Jarvis (n 24) 313.

56 UNSC, 'Final Report of the Commission of Experts Established pursuant to Security Council Resolution 780' (n 53).



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war, its strategic purposes can be clearly identified.⁵⁷ Analyses by the UN Special Rapporteur Tadeusz Mazowiecki and the UN Commission of Experts established that the widespread and systemic nature of conflict-related sexual violence committed in BiH had a strategic military purpose in some places, i.e., to forcibly displace certain ethnic groups.

According to Tadeusz Mazowiecki, the goal was to "humiliate, shame, degrade and terrify the entire ethnic group".⁵⁸

During the war, there were also reports of women being forcibly impregnated (by repeated rape until women got pregnant) and forced to bear children of the perpetrators.⁵⁹ Forced pregnancy is an additional form of psychological torture for victims, given that

pregnancy (whether terminated or not) can have long-term consequences for the survivor and her position in the community.⁶⁰ On the other hand, the crime of sexual violence was also committed for opportunistic reasons.⁶¹ Rapes took place in camps, houses, sometimes in the homes of survivors, schools, sports halls, cultural centres, clinics, factory halls, recreational facilities, health institutions.⁶² Hotel Vilina vlas in Višegrad and Karaman's house in Foča are among the most notorious places where sexual violence was massively committed.

The role of gender (the social construct that determines the social roles of men and women) in war crimes committed in BiH is an important factor in understanding the type of harm experienced by each victim. Namely, as the ICTY case analysis

57 Brammertz and Jarvis (n 24) 22.

58 UNHRC, 'Report by the Special Rapporteur Tadeusz Mazowiecki on the situation of human rights on the territory of the former Yugoslavia' (1993) E/CN.4/1993/50 para 85.

59 Brammertz and Jarvis (n 24) 22.

60 Rhonda Copleon, 'Surfacing Gender: Re-Engraving Crimes Against Women In Humanitarian Law' (1994) 5 The Hastings Women's Law Journal 261 < <https://repository.uchastings.edu/hwj/vol5/iss2/4/> > Accessed 16 September 2021.

61 *Prosecutor v Dragoljub Kunarac et al* (Judgment) IT-96-23-T& IT-96-23/1-T (22 February 2001) para 762.

62 Dijana Kapetanović, 'Razumijevanje ratne traume silovanja kod žena iz fenomenološke perspektive' [Understanding the War Trauma of Rape in Women from a Phenomenological Perspective] (Master's thesis, Univerzitet u Sarajevu 2019) 12; Brammertz and Jarvis (n 24) 307.

shows, because of gender, males may be more likely to be killed or unlawfully imprisoned during conflict, whereas females may be more likely to be displaced.⁶³ For example, during the 1995 Srebrenica genocide, Bosnian Muslim boys and men were imprisoned and thousands of them were killed in just a few days, while women, children and the elderly were forcibly transferred/expelled to the territory controlled by the Army of Bosnia and Herzegovina (ABiH).⁶⁴

In particular, conflict-related sexual violence was partly a continuation of the already existing patriarchal oppression, which manifested itself even more during the conflict.⁶⁵ Given the previously described differences in the way men and women have been subjected to this type of violence, different, often gender-based goals can be detected.⁶⁶ While on the one hand rape of women was committed as a form of destruction of “honour” and “virtue”,⁶⁷ the goal of raping men was to “emasculate” and shame them.⁶⁸ Unfortunately, these gender-based, discriminatory stereotypes and myths about rape victims permeate BiH society today.

4.2. Profile and mapping of victims

Survivors of conflict-related sexual violence come from all over BiH and include both women and men from all ethnic groups. However, the majority of the victims were women, mostly Muslim women, of different ages (from young children to the

elderly), with the majority being of child-bearing age.⁶⁹ Conflict-related sexual violence has been committed throughout BiH, as mentioned earlier, from individual cases of rape or sexual abuse to an organised system of abuse in facilities such as prisons or concentration camps. As for the latter, for example, in the hotel Vilina vlas (Višegrad) about 200 women were raped⁷⁰ while in the area in and around Foča it is estimated that several hundred victims were raped.⁷¹

Rape and other forms of sexual violence are often associated with persecution. As previously mentioned, sexual violence was committed in BiH as part of a process of ethnic cleansing. The fact that civilians often fled and forcibly left their homes as a result is evident in numerous cases of displacement within the country (most often to the territory that would later be part of the other entity), but also abroad.⁷²

4.3. Profile of perpetrators

Until 2016, in ICTY proceedings, 32 persons have been convicted of directly committing crimes of conflict-related sexual violence, while four persons were additionally convicted for failing to prevent the crime and punish the direct perpetrators.⁷³ At the same time, in the period 2004–2016, in proceedings before BiH courts, 123 perpetrators were convicted of conflict-related sexual violence (in many cases, the charge of sexual violence was one of several charges).⁷⁴

63 Brammertz and Jarvis (n 24) 11.

64 *Prosecutor v Zdravko Tolimir* (Judgment) IT-05-88/2-T (12 December 2012) para 304.

65 Medica Zenica and medica mondiale, “We are still alive”: Research on the long-term consequences of war rape and coping strategies of survivors in Bosnia and Herzegovina” (2nd revised edition, Medica Zenica & medica mondiale 2014) 25.

66 Brammertz and Jarvis (n 24) 11.

67 Kyle Delbyck, ‘Rape Myths in Wartime Sexual Violence Trials – Transferring the Burden from Survivor to Perpetrator’ (TRIAL International 2017) 84.

68 Ibid 93.

69 Brammertz and Jarvis (n 24) 23.

70 Ibid 325.

71 Aldijana Hadžić, ‘U Foči obilježen Međunarodni dan borbe protiv seksualnog nasilja u ratu’ [Foča Marks the International Day for the Elimination of Sexual Violence in Conflict] *Anadolu Agency* (Foča, 19 June 2019) <<https://www.aa.com.tr/ba/balkan/u-fo%C4%8Di-obilje%C5%BEen-me%C4%91unarodni-dan-borbe-protiv-seksualnog-nasilja-u-ratu/1510199>> Accessed 14 September 2021.

72 For example, the ICTY found that members of the Croatian Defence Council used sexual violence (along with other crimes of extreme violence and theft) to force Muslims from West Mostar into East Mostar (see Judgment *Prosecutor v Jadranko Prlić et al* (Trial Judgment) ICTY-04-74-T (29 May 2013) Volume 3, para 853); Also, the ICTY argued that rape and sexual violence (along with the crimes of murder, torture and physical violence) were part of a persecutorial campaign, i.e., the removal of non-Serbs from the Prijedor Municipality in 1992 (see Judgment *Prosecutor v Milomir Stakić* (Trial Judgment) IT-97-24-T (31 July 2003) para 818).

73 ICTY, ‘Sexual Violence in Numbers’ <<https://www.icty.org/en/features/crimes-sexual-violence/in-numbers>> Accessed 8 October 2021.

74 OSCE Mission to BiH, ‘Towards Justice for Survivors of Conflict-Related Sexual Violence in Bosnia and Herzegovina: Progress before Courts in BiH 2014–2016’ (2017) 9.

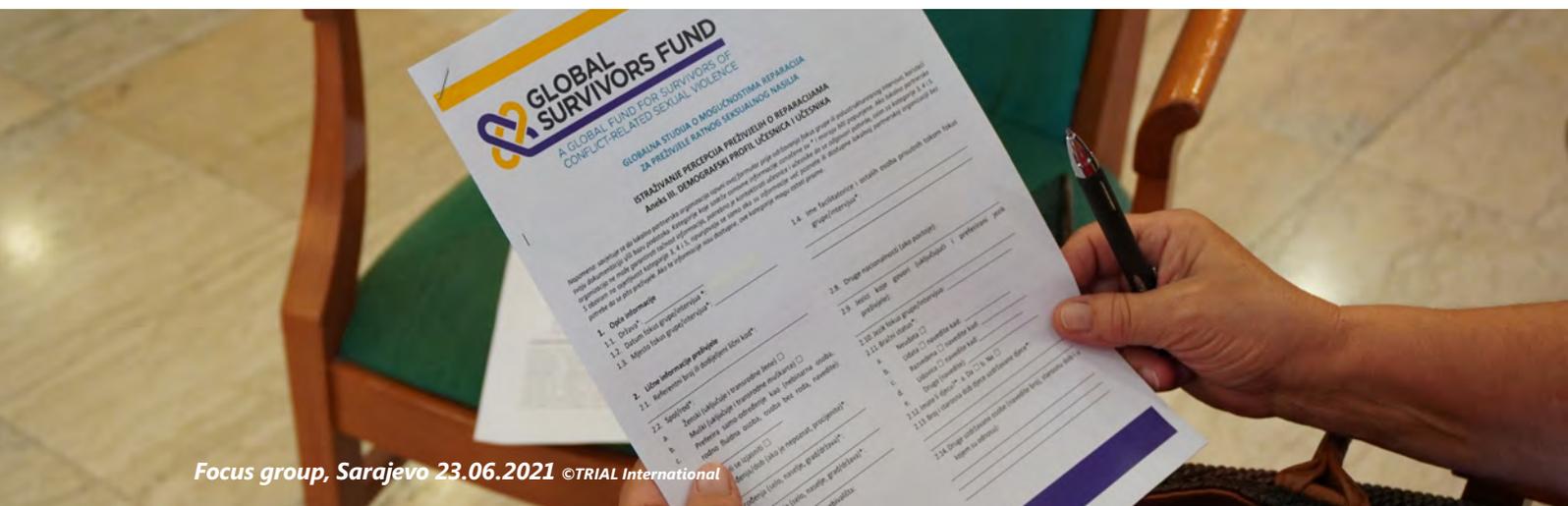
Among the perpetrators of the war crime of sexual violence, most were members of the police and military forces⁷⁵ who took part in the takeover and subsequent control of towns, paramilitary forces, and camp guards and commanders in prison settings – all those who had the easiest access to victims.⁷⁶ In addition to this type of perpetrators, case law shows that members of the military or police also allowed people from outside to enter villages or prison facilities and have access to victims.⁷⁷ The practice of the ICTY also established the responsibility of higher-ranking officials – military and political leaders – who were not direct perpetrators.

An example of a politically high-ranking defendant found guilty of crimes including sexual violence is Biljana Plavšić, vice president of the self-proclaimed Republika Srpska.⁷⁸ In addition, Radovan Karadžić, the first president of the Republika Srpska, and Ratko Mladić, a general in the Republika Srpska army, were also convicted for sexual violence crimes.⁷⁹ Observing

the relationship between superiors and subordinates we can observe that the crime of conflict-related violence was committed by both.

In those cases when superiors were not direct perpetrators, they were mostly familiar with the crime and sometimes kept records of victims of sexual violence.⁸⁰ For example, in the Delalić et al case, a deputy camp commander and a camp guard, as members of the Army of BiH, were found guilty of directly participating in the sexual abuse of prisoners, while the camp commander was found guilty as their superior.⁸¹

Stevan Todorović, as chief of the police in Bosanski Šamac, pleaded guilty to a number of acts, including direct involvement in sexual violence against prisoners in the town.⁸² Military leaders committed crimes and were found guilty of committing crimes of sexual violence on the basis of command responsibility,⁸³ or as participants in a joint criminal enterprise⁸⁴.



Focus group, Sarajevo 23.06.2021 ©TRIAL International

75 The military forces are the Army of the Republika Srpska, the Army of BiH and the Croatian Defence Council.

76 Brammertz and Jarvis (n 24) 315-317.

77 *Prosecutor v Momićilo Krajišnik* (Judgment) IT-00-39-T (27 September 2006) paras 600, 606; *Prosecutor v Mićo Stanišić and Stojan Župljanin* (Judgment) IT-08-91-T (27 March 2013) Volume 1, para 1535 and 1547; *Prosecutor v Jadranko Prlić et al* (Judgment) IT-04-74-T (29 May 2013) Volume 2, para 270, 272.

78 *Biljana Plavšić* (n 37) paras 27, 29, 34 and 120.

79 *Radovan Karadžić* (n 42); *Ratko Mladić* (n 38) paras 675, 686 and 713.

80 Ratko Mladić had personal knowledge about certain victims of sexual violence, which can be concluded from an entry in his private diary, where he describes his meeting with Slobodan Milošević. In that entry, he names two women who, according to witnesses, were held in Foča as sex slaves. *Ratko Mladić* (n 38) 13.

81 *Prosecutor v Zejnil Delalić et al* (n 44) paras 769, 772 and 778.

82 *Prosecutor v Stevan Todorović* (Sentencing Judgment) IT-95-9/1-S (31 July 2001) paras 37, 38, 39 and 40.

83 Željko Mejakić et al (first instance judgment) X-KR-06/200 (Court of BiH 2008) 5, 206-212.

84 *Ibid* 9-10, 222, 224-5.



IV. SURVIVORS' PERCEPTIONS, NEEDS, PRIORITIES AND RISKS

The devastating consequences of conflict-related sexual violence are long-term, and in some cases lifelong. Establishing a functional and quality life after such extreme forms of trauma is a matter of individual personal capacities of survivors, but it is also conditioned by the existence and quality of support from the community, the state and societal protection system.⁸⁵ This section deals with the perceptions of survivors of conflict-related sexual violence about the impact of sexual violence on themselves, their families and community; it represents their current expectations, priorities and needs to establish a functional life; assesses their knowledge of support and protection systems; and offers an overview of their understanding of the concept of reparations, including the different types and models of reparations.

In accordance with the methodological goal of our research, we tried to rely as much as possible on existing sources of information, through a systematic analysis of available data, and supplementing them with additional findings obtained through focus groups. It is important to underline that there are not many studies or research projects that deal with the specifics of the consequences of wartime rape in BiH.

In this research, we have incorporated some of the findings that mainly refer to the psychological consequences of wartime rape from a thorough research conducted by NGOs Medica Mondiale and Medica Zenica entitled: *We are still alive!: Research on the long-term consequences of war rape and coping strategies of survivors in Bosnia and Herzegovina*⁸⁶ published in 2014, and we compared them with conclusions of the focus groups we organised.

In this way, we wanted to provide a comprehensive analysis of the consequences of wartime rape on victims in BiH and to consolidate relevant data on the consequences observed in previous research and new conclusions that derive from this research focused on reparations. In addition to the perceptions of survivors obtained through individual and focus group interviews, interviews with relevant stakeholders working with victims or working in institutions that have a direct impact on the exercise of certain reparative rights of victims, were of great importance for this research.

5. Impact of conflict-related sexual violence on victims, families and communities

Conflict-related sexual violence, as a specific form of trauma, causes numerous psychological and physical consequences on the health of survivors. Wartime rape should not be viewed solely as an individual trauma. It also impacts survivors' families and communities and can have consequences over generations.

Thus, it should be borne in mind that it "takes place in a historical and regional context in which people hold patriarchally informed values about sexuality and virginity and believe certain myths about rape that contribute to making war rape such a powerful strategy of warfare",⁸⁷ which produces consequences for the entire community and society. How survivors react to strong traumatic experiences, which conflict-related sexual violence is, cannot be individualised, but must be seen against the complex interplay and responses that this type of trauma causes in the

⁸⁵ Kyle Delbyck, 'Compensating Survivors in Criminal Proceedings: Perspectives from the Field' (TRIAL International 2016) 4.

⁸⁶ Medica Zenica and medica mondiale (n 64).

⁸⁷ Ibid 20.

Mondiale, also state that they feel a certain aversion to men after the traumatic experience, as well as a decreased desire for sexual intercourse, which is why many of them ultimately avoid it.⁹⁴

“Being in the camp for two or three months, lying on bare concrete, in hospital pyjamas, is later reflected through illness. So, I had to have surgery on my spine twice.”⁹⁷

The majority of the participants in focus groups mentioned other significant physical consequences they feel and live with, including the consequences of injuries during the war, diseases such as tumours, which also includes various types of cancer, and cardiovascular diseases. Analysing the demographic questionnaires that the participants filled out during focus groups, we noted that 8.8% of the participants stated that they are oncology patients. Certain research indicates the existence of a connection between some mental illnesses associated with post-traumatic stress disorder and an increased risk of cancer.⁹⁵

In addition to the aforementioned types of physical illnesses, survivors face permanent personality changes after traumatic experiences and long-term consequences in the form of mental illnesses and disorders.⁹⁸ When filling out the demographic questionnaires, 40% of the participants in the focus groups stated that they suffer from post-traumatic stress disorder (PTSD); we believe that this number is even higher.⁹⁹ PTSD occurs with a number of other disorders such as: “depression, sleep deprivation, mood swings, difficulty concentrating, paranoia and aggression”.¹⁰⁰ Also, PTSD leads to a high rate of anxiety-phobic disorders and a high rate of depression, and in some cases results in “permanent personality change” in survivors.¹⁰¹ Most of the participants in the focus groups stated that due to PTSD and other disorders, they often struggle to concentrate, which has direct repercussions on the possibility of employment and work, loss of social network and similar negative effects. In addition to long-term psychological consequences, this type of disorder thus causes problems in daily life activities, including social life and their functioning with the community.¹⁰² Many participants mentioned the occurrence of suicidal thoughts as a result of surviving trauma.

Most survivors in the focus group also experienced large number of psychosomatic diseases, most commonly cardiovascular diseases, often manifested in high blood pressure. As many as 48.8% of the participants in focus groups stated that they have heart problems and high blood pressure. In a conversation with neuropsychiatrist Dr Amra Delić, she pointed out that as a consequence of injuries and violence committed during the traumatic events, degenerative diseases of the spine and various painful syndromes often occur as physical consequences.⁹⁶

“In my case, the consequence was cancer. I got a cancer on the vocal cords, on both sides. It’s all from worry, crying; my throat tightens, I can’t even cry, I can’t swallow. I think I got cancer from anxiety, stress, from crying.”¹⁰³

94 Medica Zenica and medica mondiale (n 64) 81.

95 Siobhan O’Neill et al, ‘Associations between DSM-IV mental disorders and subsequent self-reported diagnosis of cancer’ 2014 76 Journal of Psychosomatic Research 207–212.

96 Interview with Dr Amra Delić, neuropsychiatrist (Zoom, 8 June 2021).

97 Focus group with survivors of conflict-related sexual violence held in Prokosovići, 3 and 4 June 2021.

98 Interview with Dr Amra Delić, neuropsychiatrist (Zoom, 8 June 2021).

99 Some survivors did not list all the diseases they were diagnosed with, but answered the question about their health condition by stating one such disorder or disease (for instance heart problems, diabetes, etc.). Furthermore, the Medica Zenica study, which included a larger sample, found that 57% of women had PTSD twenty years after the war. See Medica Zenica and Medica Mondiale (n 64) 71.

100 Delbyck, ‘Compensating Survivors in Criminal Proceedings’ (n 85) 12.

101 Interview with Dr Amra Delić, neuropsychiatrist (Zoom, 8 June 2021).

102 Ibid.

103 Focus group with survivors of conflict-related sexual violence held in Prokosovići, 3 and 4 June 2021.

"After everything that happened I, and I believe many others, thought of suicide first. Today, most of the time when I walk through the town or on the street, I feel like everyone knows what had happened and then fear overwhelms me, I turn my head, avoid contact and similar."¹⁰⁴

"I somehow feel humiliated and I even attempted suicide, I took one hundred pills of one hundred milligrams, a full bottle, and lay down for three days and three nights."¹⁰⁵

5.2. Stigmatisation as a consequence of conflict-related sexual violence

The social stigma that accompanies conflict-related sexual violence hinders rehabilitation and further deepens the sense of humiliation and degradation that is rooted in patriarchal culture in BiH.¹⁰⁶ It prevents progress both at the individual level and within the social community. Director of Medica Zenica, Sabiha Husić explained: "Research shows that to this day, survivors of conflict-related sexual violence cope with many difficulties. First of all,

with acceptance of oneself and acceptance within the family, even the community. Stigmatisation is still present and survivors are still silent and do not speak, either to others or the family or community for fear of being labelled and marked."¹⁰⁷

Most of the survivors during our research emphasised that they still feel a sense of shame, humiliation, and rejection by society. This is confirmed by the results of a survey conducted by UNFPA in 2015 (i.e., two decades after the end of the war), which showed devastating data on stigmatisation in BiH society. The report reads that as many as two thirds of the participants in the research described being exposed to "condemnation, insults and humiliation in the community from the moment when their neighbours or friends or some family members learned that they were the victims of sexual violence during the war. Several survivors stated that they were exposed to the comments and objections from neighbours and friends, sending out the message that they are themselves to blame for the violence, they were looking for it and they deserved to be abused."¹⁰⁸

"I don't have a real name in my town – they call me various names, derogatory and the like. They called me 'the raped one', this and that, just not by my name. But I will not leave."¹⁰⁹

Some women are exposed to condemnation, as well as various forms of violence by their husbands because of what they have experienced.¹¹⁰ There are many cases in which women victims of conflict-related sexual violence have been abandoned by

their partners or forced to divorce if they were married.¹¹¹ Violence worsened significantly after the outbreak of the COVID-19 pandemic, as a result of which, for example, only in BD, three cases of eviction of women were reported that made them seek help

104 Focus group with survivors of conflict-related sexual violence (Prokosovići, 3 and 4 June 2021).

105 Ibid.

106 Delbyck, 'Compensating Survivors in Criminal Proceedings' (n 85) 13.

107 Interview with Sabiha Husić, Director of Medica Zenica (Zoom, 2 June 2021).

108 UNFPA, 'Stigma against Survivors' (n 94) 7.

109 Discussion with survivors (Tuzla, 26 October 2021)

110 UNFPA, 'Stigma against Survivors of Conflict-Related Sexual Violence in Bosnia and Herzegovina' (2016) 7, 17.

111 Interview with Dr. Amra Delić, neuropsychiatrist (Zoom, 8 June 2021).

at the neuropsychiatry department.¹¹² According to neuropsychiatrist Dr Amra Delić, survivors often hide their experiences from their spouse, for fear that they will be abandoned.¹¹³

Nonetheless, UNFPA findings demonstrate that in parallel with the problem of stigmatisation in BiH society, there is also general empathy for victims of conflict-related sexual violence. The research thus found that the most common reaction of citizens in relation to survivors of conflict-related sexual violence is "pity, followed by compassion, understanding and the need to support them".¹¹⁴ It is also noteworthy that the citizens "show more positive emotions towards survivors when they are asked about their personal views, rather than when they are asked about the attitudes of society."¹¹⁵

Nevertheless, some efforts have been made to address the problem of stigmatisation, primarily led by survivors' associations and civil society organisations. For example, the film *Grbavica*¹¹⁶, which premiered in 2006, raised awareness of the BiH public, but also of the international community about the consequences of conflict-related sexual violence on survivors and their families and the problems they face. The release of the film marked the start of the campaign "For the dignity of survivors", organised by several non-governmental organisations and survivors' associations with the aim to sensitise society and improve the regulations on the status of survivors of conflict-related sexual violence.¹¹⁷



ROLE OF RELIGIOUS LEADERS IN COMBATING STIGMA

In addition, the role of religious leaders in responding to the suffering of survivors has proven important. Thus, in 2017, the religious leaders of the Orthodox, Islamic, Jewish and Catholic communities in BiH signed the "Declaration on denouncing stigmatisation of survivors of sexual violence in Bosnia and Herzegovina"¹¹⁸, and a year later the Interreligious Council in BiH presented a "Manual for members of the clergy working with survivors of conflict-related sexual violence"¹¹⁹, showing the readiness of religious communities in BiH to address issues related to survivors of conflict-related sexual violence and to improve their position in BiH society.

112 Discussion with survivors (Tuzla, BiH, 26 October 2021). A series of movement restriction measures that were imposed led to an increase in domestic violence, specifically violent behaviour towards women and children, which was unfortunately also the case with the families of survivors of conflict-related sexual violence. Where the survivors had hitherto concealed the facts of their status, their husbands became suspicious as to their sources of income and some found out about the sexual violence they had been exposed to. The confinement, fear of getting infected with the COVID-19 virus, and economic problems led to re-traumatisation of this vulnerable category of people whose lives are marked by traumatic consequences of the war. On the other hand, change in the operation of those who constitute protection mechanisms for victims (safe houses, social work centres, the police) seen in reduced professional capacity, reduced working hours and lack of protective equipment that hindered their work, led to a situation where survivors most often felt abandoned and left to fend for themselves.

113 Interview with Dr. Amra Delić, neuropsychiatrist (Zoom, 8 June 2021).

114 UNFPA 'Stigma against Survivors' (n 94) 16.

115 Ibid 16.

116 *Grbavica* is a film by BiH director Jasmila Žbanić that tells the shocking story of single mother Esma who was raped in the war and her daughter was born as a result of that act. The film has won numerous awards.

117 For more information, see section 13.2.1.1.

118 Interreligious Council of Bosnia and Herzegovina, 'Declaration of the Interreligious Council on denouncing stigmatisation of survivors of sexual violence in Bosnia and Herzegovina' (19 June 2017) <<https://ba.unfpa.org/en/news/declaration-interreligious-council-denouncing-stigmatization-survivors-sexual-violence-bosnia>> Accessed 4 October 2021.

119 UNFPA, 'A joint Manual of the Interreligious Council in Bosnia and Herzegovina for members of the clergy working with survivors of conflict related sexual violence' (2018) <<https://ba.unfpa.org/en/news/joint-manual-inter-religious-council-bosnia-and-herzegovina-members-clergy-working-survivors>> Accessed 4 October 2021.

“I would do the same as my mother. When she saw that she couldn’t talk to me, when I didn’t talk at all for three months, when I only stared at one spot and when she saw that I really needed help, she took me to see a neuropsychiatrist. I would do the same as my mother and I am immensely grateful to my mother for guiding me wisely towards the right path.”¹²⁰

It is important to underline that the research showed that it is much easier for long-term beneficiaries of psychological support to cope with social stigma and condemnation, and to talk about the trauma that have survived. This confirms the importance of providing psychological support to survivors, both in order to overcome trauma and to fight stigma.

5.3. Double stigmatisation of male victims of conflict-related sexual violence

Although the number of male participants in focus groups was lower than the number of female participants victims of sexual violence, certain patterns have been observed with respect to community attitudes towards male victims of sexual violence. Such findings point to the effects of deep-rooted patriarchal and traditional perceptions and behaviours in BiH society related to men. Thus, male participants state that they find it much harder to talk about sexual violence than for women and that there is a lack of understanding of society.

They have an increased fear of associating the trauma they have suffered with their sexual orientation, and a pronounced concern that family members or people in the community will find out about the violence they have suffered. The double stigmatisation of men can be particularly dangerous, as male survivors are subjected to both the stigma of being a victim of conflict-related sexual violence and the stigma of presumed homosexuality.¹²¹

“With all due respect to women victims of sexual violence, for me as a man... it’s different. Trust me, a man who has survived sexual abuse feels differently than a woman. People might wonder, you know, if he is a homosexual, you understand what I mean. It is very difficult for a man to admit that, to himself first, let alone to open his soul to someone else.”¹²²

“It is very difficult, even today when I remember, I bury those documents as much as I can. God forbid any of my children see them. And I hid the decision recognising my status so that no one would ever see it.”¹²³

5.4. Impact of sexual violence on family relations

As to the impact of trauma on family and family relations, most participants, both women and men, stated that not all members of their family are aware of the violence they have suffered, while in several cases none of family members have that knowledge. The family generally has information about wider circumstances (e.g., detention in a camp), but has no knowledge of specific traumatic events, which causes misunderstanding of the psychological and physical consequences of survivors, but also makes it difficult to achieve a sense of trust between survivors and their family members.

¹²⁰ Focus group with survivors of conflict-related sexual violence (Prokosovići, 10 and 11 June 2021).

¹²¹ PSVI, ‘Principles for Global Action: Preventing and Addressing Stigma Associated with Conflict-Related Sexual Violence’ (2017) 17.

¹²² Focus group with survivors of conflict-related sexual violence (Prokosovići, 3 and 4 June 2021).

¹²³ Ibid.

“My daughters don’t know about me yet. I am empowered to talk to my friends, but I am not yet brave enough to tell my daughters what I have survived. So, I can only tell them that I was in captivity, it is somehow easier for me, but I cannot tell them that I was raped. While other people close to me do know.”¹²⁴

On the other hand, survivors who, after many years receiving professional psychological support (provided by psychotherapists or neuropsychiatrists) started speaking about traumatic experiences with their family members largely report positive experiences. Many of them were surprised by the support they received within the family and state that family support was a significant factor for their empowerment. Many allege that with the support of their families, they were further empowered to talk about traumatic experiences, pursue prosecution of perpetrators and exercise their rights.

“It’s hard to talk about it. I have two daughters, my children do not know, my husband does. My children don’t know and I never told them.”¹²⁵

What is common, i.e., what characterises the responses of both women and men survivors of conflict-related sexual violence, is the particularly pronounced fear of the possibility that their children will find out about the traumas that they have survived. Many participants state that even when individual family members have knowledge about violent experiences, the survivors are not ready to share such knowledge with their children. Most participants stated that they were unable to share the traumatic experience with their children, regardless of their age. The reasons presented are numerous, including fear of children’s reaction to learning about the traumatic experience of parents, social condemnation of these experiences, and fear of re-traumatising children, given the fact that the children of many survivors suffered their own trauma during the war.

“You can’t tell your child everything, he will go off to take revenge, to fight, he gets so rebellious that I’m afraid he will get hurt. He will take revenge on the wrong person. That’s show revolt, hatred grows in a child...”¹²⁶

The majority of the participants believe that their children still feel the effects of the war. Even when they are not aware of the traumatic experience of their parents, they have their own experiences as witnesses of wartime events during persecution, time as refugees, detention in camps. This is especially pronounced when the children were present and witnessed the act of sexual violence.

“My son doesn’t know; he doesn’t even know that I have the allowance and that is a growing problem for me day by day. Now I do want to talk and tell him, but I hesitate. I hope that someday, and maybe that day will never come, I will be able to gather the courage.”¹²⁷

During focus group discussions, it was observed that women who survived conflict-related sexual violence as minors are sometimes more willing to cope with the experience as part of their lives and move on, unlike women who were raped at an older age. It has also been observed that women who have experienced trauma as minors have a stronger intensity of fear and care for their children, especially if the children are of the age at which they survived sexual violence.

¹²⁴ Ibid.

¹²⁵ Focus group with survivors of conflict-related sexual violence (Prokosovići, 3 and 4 June 2021).

¹²⁶ Ibid.

¹²⁷ Focus group with survivors of conflict-related sexual violence (Prokosovići, 10 and 11 June 2021).

"I cannot tell what happened to me when I was less than 11 years old. Naturally, my daughter tells me, unaware of that, "mom, I want to go there" and she is only 17 years old. I am an open-minded person, really full of understanding, full of love, full of attention. But when she asks to go somewhere alone, I get scared. I do want to be a good parent, a good mother, to say "go, just be careful", but I often catch myself reacting differently than other parents would. I raise my voice at her and don't let her go anywhere because everything there is foreign to me. Literally, I feel that I transfer a part of my trauma to my daughter by raising her."¹²⁸

Conflict-related sexual violence suffered by victims can also have devastating consequences for their family members, especially their children.¹²⁹ Therefore, mental health experts, as well as survivors themselves, underline the importance of individual and family psychotherapy as well as partner/marital counselling. The importance of such psychological support is manifold and, among other things, it can lead to a better understanding of the needs of family members/survivors of conflict-related sexual violence and to the improvement of family relations.¹³⁰ Also, research shows that conflict-related sexual violence can have long-term consequences for the sexual functioning of survivors, and therefore experts emphasise the importance of specialist counselling in sexuality and marital therapy.¹³¹

5.5. Children born of conflict-related sexual violence

With respect to the transgenerational trauma borne by the children of survivors, special attention should be devoted to children born of wartime rape. One of the goals of rape was forced impregnation of women. Children born of rape during the war have almost never been discussed in BiH for years. Unfortunately, there are no official data on the exact number of these children, as no records have been kept of their births.¹³² After childbirth, some women renounced the children after suffering rape, and such children were placed in orphanages and most of them are not aware of their origins.¹³³ The children left in the care of their mothers to raise them on their own, who are aware of their origin, face problems with their identity, stigmatisation, marginalisation and isolation.¹³⁴

Mothers often raised them in difficult socio-economic conditions, without any additional support.¹³⁵ In a conversation with Ajna Jusić, president of the Association "Forgotten Children of War", the problem of transgenerational transmission of trauma was highlighted.¹³⁶ In these cases, the trauma may even be twofold; the trauma of the mother that is transmitted to the child and impacts their life, and the personal trauma that comes with the knowledge that they were born as a result of rape.¹³⁷ In these cases, psychological support is especially important and it is necessary that both mother and child receive it. Social stigmatisation in such cases is also twofold and refers to the stigmatisation of mothers as survivors,

128 Ibid.

129 Medica Zenica and medica mondiale (n 64) 79-89.

130 Ibid 140-141.

131 Ibid 141.

132 Aldina Zaimović, 'Intervju sa Ajnom Jusić – Ajna Jusić, djevojka prema kojoj je snimljen film Grbavica: Dan kad sam otkrila bolnu istinu' [Interview with Ajna Jusić – Ajna Jusić, the girl who was the inspiration for the film Grbavica: The day I discovered the painful truth] *AZRA Magazine* (2019), <<https://azra.ba/intervju/144640/ajna-jusic-dan-kada-sam-otkrila-bolnu-istinu/>> Accessed 26 September 2021.

133 Still, preliminary results of Dr Delić's research showed that in BiH, a significant number of children born of war grew up with their mothers, where the greatest risk is transgenerational trauma. Research also showed how some of these children grew up without parental care or were given up for adoption. Amra Delić, 'Kvalitet života i dugoročne psihicke posljedice u žena sa iskustvom ratnog silovanja: magistrski rad' [Quality of Life and Long-Term Psychological Consequences in Women with Wartime Rape Experience: Master's Thesis] (Master's thesis, Univerziteta u Tuzli 2015). The persons employed in the social protection centres and children's homes were also not aware of the origin of the children. Joana Daniel-Wrabetz, 'Children Born of War Rape in Bosnia-Herzegovina and the Convention on the Rights of the Child', in Charli Carpenter (ed), 'Children Born of War: Protecting Children of Sexual Violence Survivors in Conflict Zones' (Kumarian Press 2007) 21-39.

134 For more on the Association Forgotten Children of War, see: <http://zdr.org.ba/o-nama/>; Association Forgotten Children of War, 'Stavovi bh društva o djeci rođenoj zbog rata' [Attitudes of BiH Society towards Children Born Because of the War] (forthcoming) 8, 15.

135 Association Forgotten Children of War, 'Stavovi bh društva o djeci rođenoj zbog rata' [Attitudes of BiH Society towards Children Born Because of the War] (forthcoming) 3, 6.

136 Interview with Ajna Jusić, President of the Association Forgotten Children of War (interview conducted on Zoom, 11 August 2021).

137 Ibid.

but also to the stigmatisation of children. Ajna's experience shows that children born of wartime rape struggle with stigmatisation in schools, other

institutions – in places where the greatest support is expected.¹³⁸ Many of them face peer violence and verbal harassment in schools.

“The hardest thing for me was when they said they were slaughtering children, and they will finish off half of them the next morning. I was beaten so badly that I couldn't get up, and the children were all over me, saying “mom, protect us, please”, and I couldn't protect myself, let alone them...”¹³⁹

“Until I started school, everything was fine, I was a child, unaware of many things around me, and my mother was always there to protect me from anything. However, when I started school, problems emerged. I was born in 1993, as the first baby of the Medica safe house in Zenica. After a few years there, my mother returned to the vicinity of Zavidovići, to her birthplace, but not alone – with an “addition”, the child. In small communities, that is a rather unacceptable thing, because we were an incomplete family, mom and I, while the third figure, the father, was missing. During that period, my mother suffered the most; in addition to having to work to support us, she also had to listen to ill-intentioned people.”¹⁴⁰

“When I was enrolling in school, all the children were standing in line, we were handing over our documents; in puberty, the first feeling appeared that something is wrong, because when the lady that I was handing documents to asked me for my father's name, I said I didn't know it – my mother was outside with my stepfather at that time – and she asked again: “How come you don't, where is your father?”. I replied that he had died, to which she said, “Well, I need his death certificate then” and I didn't have that.”¹⁴²

6. Survivors' perceptions about reparations

Through discussion with the focus groups' participants, it was observed that most survivors were not adequately informed about the concept of reparations. The reason for not knowing the concept of reparation is primarily the lack of adequate programmes and instructions that would try to bring the concept closer to the survivors. In addition, the majority of the participants come primarily from rural areas, they lack adequate education to understand the complexity of the concept of reparations. At the same time, however, it was noted that they are able to identify and relate their own needs and certain

Children born of wartime rape are not a legally recognised category of war victims and therefore do not enjoy any rights or benefits that would facilitate their access to, and funding of, schooling or employment benefits. A specific problem are the administrative difficulties that this category of children faces – one must provide names of both parents when submitting documentation in various administrative procedures.¹⁴¹

¹³⁸ Zaimović (n 133).

¹³⁹ Focus group with survivors of conflict-related sexual violence (Prokosović, 3 and 4 June 2021).

¹⁴⁰ Ibid.

¹⁴¹ For more on the inadequate response of the authorities to the needs of these children, see section 14.1.1.

¹⁴² Zaimović (n 133).

rights they are already exercising, as well as the rights and services they believe they should have access to, and then place them in the context of reparations. Based on this, they were able to identify models of reparations they deem most needed. Most participants stated that reparations for them are all measures that would contribute to an “easier life” after a traumatic experience.

It is evident from the discussions that survivors associate the concept of reparations mostly with material rather than symbolic reparations, although in most discussions they stated that financial assistance and support are as important as, for example, the fact that crimes are publicly acknowledged, that places of suffering are memorialised and that official public apology is ensured. Most of the participants, when asked what reparations mean to them, answered that reparations are the pursuit of justice and an attempt to improve the situation for those who have experienced trauma.

WHAT DOES REPARATION MEAN TO SURVIVORS IN BIH?

As will be presented below, under the term reparations, survivors underline activities, laws, measures, and programmes that would primarily lead to: prosecution and punishment of perpetrators; public acknowledgment of the crimes committed and public apology to the victims by the state and its institutions; compensation for non-pecuniary damage; housing; rehabilitation – especially through continuous access to psychological support and access to the type of medical spa therapy or health spa treatment; access to employment for survivors and their family members; education and employment benefits for survivors’ children; support for victims’ associations.

“After that, a turning point happened in the second semester, when the history teacher asked me in class what my father’s name was. When I said I didn’t know, the laughter of my classmates was quite heavy and has remained etched in me to this day.”¹⁴³

“I actually think of it as something that’s the most important for me to see justice served.”¹⁴⁴

“An attempt to fix the factual state.”¹⁴⁵

It has been observed that the perception of survivors about their role in defining their needs and, accordingly, the reparative measures that should be implemented, has changed over time. Most survivors, who feel empowered enough, stress that they would like to participate in the decision-making process and have “their voice heard”, but do not know the tools needed to adequately advocate for their rights. As will be shown below, almost all the participants state that they got informed about their rights mainly

through the work of non-governmental organisations that provide various types of support to survivors. It is obvious that they consider the most important type of support to be psychological support they received from organisations such as Vive žene, Medica Zenica, but also individual psychotherapists and neuropsychiatrists they met.

They state that, in addition to providing psychological support, these organisations were the first to inform them about their rights and the possibility of achieving the status of civilian victims of war or refer them to other non-governmental organisations that provided other necessary forms of support (e.g., legal aid provided by TRIAL International).

143 Ibid.

144 Focus group with survivors of conflict-related sexual violence (Prokosovići, 3 and 4 June 2021).

145 Ibid.

"I thank the organisations that really stood in our protection and directed us which way to go, to fight. They are still fighting for us today."¹⁴⁶

7. Survivors' current needs

Through the conversations with survivors in focus groups it is visible that their need for material reparations is particularly pronounced, given that almost all the participants stated that they are in a difficult economic situation and that they need financial resources to be able to meet a number of needs. In addition to financial needs, the need for adequate housing was emphasised as a priority. Most participants stated that this problem occurs for several reasons: they were not able to obtain

adequate replacement accommodation because they owned property in places of pre-war residence to which they mostly did not want to return; they did not have sufficient financial resources to renovate housing units in places of pre-war residence to which they were forced to return in some situations; when they had the funds to buy land, they did not have enough funds to build an adequate living unit on it; or they did not have sufficient financial resources to invest in the existing housing units allocated to them, and thus create adequate living conditions.

"What hurt me the most was that when I couldn't get a replacement apartment, as a survivor, no one offered me any funds to at least equip what I had so that I can move in there. I had to leave the collective accommodation in the coldest winter, in January."¹⁴⁷

"When I was in collective housing, as a victim with five minor children, they kicked me out of that centre, the housing. I didn't have water in my house for three years, my house was not equipped to live in, I only had plastic sheeting on the windows."¹⁴⁸

As for returning to pre-war places of residence, a particular problem is the fact that these are places and communities where survivors have, in several cases, experienced trauma, which is why returning to such communities can cause re-traumatisation, heightened feelings of fear, anxiety and insecurity. In addition, in many cases, these are rural areas where issues such as access to water, electricity and transport have not been adequately addressed, which has a direct impact on the health problems of survivors.

Most of those who have returned to rural areas report difficulties in obtaining adequate health care and psychological support. They state that it is much more difficult for them, due to poor infrastructure and the distance of rural areas from city centres, to have therapy regularly and receive regular and adequate psychological support and other health services that they desperately need. The need to

provide one-off assistance to survivors in specific situations was also mentioned. One survivor thus stated that at one point when she desperately needed firewood for the winter, the local Social Welfare Centre denied her request for help.

With respect to material reparations, all the participants were of the opinion that positive discrimination is needed when it comes to access to employment for survivors and their family members, as well as certain benefits for the education of their children. Younger participants stated that they considered the employment aspect to be particularly important, underlining that most participants were unable to find adequate employment. They believe that with the psychological and physical consequences of the traumas experienced, special help is needed during professional training and that such help is not adequately provided by the authorities.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

Most survivors apply for the status of civilian victims of war, through which they receive monthly allowances as a form of social benefits, due to “a need for existential resources, a desire to have the same benefits as other people, and the wish to ensure that their experiences are recorded for future generations to prevent them happening again”¹⁴⁹. However, all the survivors in focus groups believe that their livelihoods have not been completely covered in this way. The majority of younger participants stated that the monthly allowances are too

low for the needs and standard of living in BiH, and that in addition to a monthly allowance, professional training for certain jobs would be of great importance, as well as adjusted education and training, and assistance in finding employment. Older participants, on the other hand, state that adequate employment assistance was not provided on time, that they are now unable to work in their “old age” and are forced to rely solely on monthly allowances they get based on their victim status.

“It was yesterday that I mentioned that they granted us a monthly allowance. It is like a charity for me, because I have become incapable of work. I can’t work. I would like to work, but I can’t work because of my illness, because of other illnesses after those traumatising events.”¹⁵⁰

“When I secured an apartment for myself, when I was younger, I could cope. However, since last year, since February I have not had work. Therefore, as soon as you don’t work, you can’t pay utilities and everything else. I also have a child who needs to go to school, who needs everything, as all other children.”¹⁵¹

Some survivors pointed to another problem that exists, as far as they know, in the Federation of BiH and in the Brčko District of BiH, and referred to the inability of all victims to get support for starting their businesses. Namely, according to the information available to them, the Fund for Vocational Rehabilitation and Employment of Persons with Disabilities in FBiH (the Fund)¹⁵² which was established as a public institution with the primary task to provide support for vocational rehabilitation and employment of persons with disabilities, has granted funds¹⁵³ to some victims of conflict-related sexual violence.

Victims who were granted victim status before 2006 under the provisions of the FBiH Law on Principles of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children¹⁵⁴ succeeded in this by proving bodily harm caused by abuse in a certain percentage – they had a certificate of 100% disability issued by the competent Social Welfare Centre on the basis of which they used the opportunity of obtaining funds to start their own businesses. In this way, one survivor, for example, started a great business in a small community in Central Bosnia.¹⁵⁵

In addition to this right, on the basis of a certificate of 100% disability, one survivor was granted benefits for car registration and got a disability parking pass issued for a period of ten years, with the support of the Social Welfare Centre of her municipality.¹⁵⁶ After the adoption of amendments to the Law in 2006, which introduced a special category of victims of sexual violence, survivors started getting certificates that they belong to a special

149 Medica Zenica and medica mondiale (n 64) 110.

150 Ibid.

151 Focus group with survivors of conflict-related sexual violence (Prokosovići, 10 and 11 June 2021).

152 The Fund was established by the Law on Vocational Rehabilitation, Training and Employment of Persons with Disabilities. For more information on the Fund, see: www.fond.ba. Article 4 (3) of the Law stipulates that, within the meaning of the Law, a person with a disability shall be: “A person who has the right to professional rehabilitation according to the regulations on people with war-related disabilities, both military and civilian.”

153 The funds range from BAM 10,000 to 20,000.

154 For more information on these legislative solutions, see section 14.1.

155 Conversation with Fadila Selak Radmilović, President of Association Sehara (telephone conversation, 17 September 2021).

156 Discussion with relevant stakeholders (Sarajevo, 28 October 2021).



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category of civilian victims of war, not related to any bodily harm, on the basis of which they could no longer apply for support from this Fund. At the same time, the survivors are also aware that in some municipalities they can exercise this right with such a certificate – it all comes down to interpretation of certain social welfare centres.¹⁵⁷ They stated that it is therefore necessary to work on a uniform solution that would enable survivors in all cantons and municipalities who do not have 100% disability confirmed to apply for business registration and have access to other support measures.¹⁵⁸

“You see, we are getting old, we were young then. And youth somehow coped with this and that in life, and God is my witness, as we age, it gets harder and harder.”¹⁵⁹

Survivors also emphasise the need to ensure priority for them in all situations in which a general public call is issued for agricultural incentives or other forms of support for entrepreneurship. Declarative inclusion and preference given to victims in the text of the public call are not enough, it is necessary to implement this effectively. One survivor from BDBiH shared that on one occasion she applied to a local public call for agricultural projects, which stated that preference would be given to victims of conflict-related sexual violence.¹⁶⁰ UN Women provided her with technical assistance in developing a project. Despite that, she did not get it. Projects were approved for 30 applicants, while she was 72nd on the list. She believes that the reason is bribery, that is in fact being given true priority.

¹⁵⁷ Discussion with survivors (Tuzla, BiH, 26 October 2021).

¹⁵⁸ Ibid.

¹⁵⁹ Focus group with survivors of conflict-related sexual violence (Prokosović, 10 and 11 June 2021).

¹⁶⁰ Ibid.

As for responding to the psychophysical difficulties that survivors of sexual violence face, the importance of appropriate psychological support has been pointed out consistently by survivors. In BiH, psychological support is available in 46 mental health centres in FBiH, 27 mental health centres in RS, and one mental health centre in BD.¹⁶¹

However, according to survivors, the available psychological support is at times inadequate, given the understaffing of these centres – in most cases, they employ only one psychologist and only one psychiatrist.¹⁶² Survivors of conflict-related sexual violence do not have priority in receiving this type of support, and some centres are certainly preoccupied with working with more severely mentally ill people, which means that some survivors wait a long time and/or do not receive this support regularly. Furthermore, mental health experts point out that working with survivors of conflict-related sexual violence requires special treatment with a special focus on psychotherapy, precisely because of the long-term and complex traumatic consequences.¹⁶³

However, given the aforementioned problem of understaffing in mental health centres, it is clear that some centres are not able to apply this treatment method. Also, in light of the mentioned specific problems of survivors in rural areas, it is noteworthy that some survivors indicated that they did not seek psychological support, although they felt they needed it because they were unable to reach the centres (due to distance or insufficient financial resources to pay for transport) which deprives them of this essential rehabilitation measure.

"I need a spa more than I need bread."¹⁶⁴

The research also identified a relatively new articulated need, which was not highlighted in previous research on the consequences of conflict-related sexual violence but has recently been noticed in the work with survivors of TRIAL International and Vive žene. It is the need for a new kind of psycho-medical rehabilitation.

Most of the survivors who have been interviewed over the years do access psychological support services and enjoy their right to health care, but with the status of a civilian victim of war they are not able to exercise the right to medical spa therapy. Given the passage of time from the beginning of the war in BiH until today, many survivors are already in the age group over 50, and the aging process of this population, with the consequences of rape, has a significant impact on their physical illnesses.

"If possible, the spa, my back hurts, I have chronic spine pain, if there is any chance or hope for that..."¹⁶⁵

Most participants in this age group stated the need for spa treatment as one form of medical rehabilitation. They believe that the physical consequences of surviving the trauma, which are further manifested through the aging process, would be alleviated by medical spa therapy services, apart from other measures, like for instance the possibility of financing orthopaedic aids. Currently in the FBiH and BD, relevant laws do not provide for free of charge medical spa therapy for civilian victims of war, while in RS, although such a provision is provided, it has not yet been implemented in practice three years after the adoption of the law.¹⁶⁶

161 Mentalno zdravlje, "Psihološka pomoć u centrima za mentalno zdravlje/centrima za zaštitu mentalnog zdravlja u Federaciji BiH i Republici Srpskoj" [Psychological assistance in Mental Health (Protection) Centres in the Federation of BiH and the Republika Srpska] <<http://www.mentalnozdravlje.ba/psiholoska-pomoc-u-centrima-za-mentalno-zdravlje-centrima-za-zastitu-mentalnog-zdravlja-u-fbih-i-rs>> Accessed 20 October 2021.

162 IOM, 'Pregled rada centara za mentalno zdravlje u Bosni i Hercegovini' [Overview of Mental Health Centres in Bosnia and Herzegovina] <<https://bih.iom.int/sites/bih/files/downloads/publications/pregledi60str.pdf>> Accessed 20 October 2021.

163 Medica Zenica and medica mondiale (n 64) 69-74; World Health Organization, 'Responding to the Psychosocial and Mental Health Needs of Sexual Violence Survivors in Conflict-Affected Settings' (2011) 24-28.

164 Focus group with survivors of conflict-related sexual violence (Prokosovići, 3 and 4 June 2021).

165 Ibid.

166 For more information, see section 14.1.

Instances in which this right is being exercised through the general application process with the health insurance system that applies to all citizens are extremely rare. There is a lack, among other things, of clear rules and procedures to ensure that expert commissions make decisions based on the specific consequences of conflict-related sexual violence that need to be addressed. The consequences of leaving these decisions to a somewhat arbitrary assessment by competent services are examples of rejecting applications of survivors with pronounced gynaecological and other consequences of rape.¹⁶⁷

"They can help me get physical therapy, get a medical spa therapy free of charge."¹⁶⁸

"We all need medical spa treatment and financial assistance, not just me. All of us who have survived that."¹⁶⁹

It is particularly important to emphasise that the majority of the participants state that the status of a civilian victim of war does not offer them the same benefits and does not provide the same rights as the rights of other categories of victims of war, such as war veterans, people with war-related disabilities, and children of fallen soldiers. It is interesting that these findings completely coincide with the findings of the research done by Medica Zenica in 2014, which indicates that the perception of survivors about the status of civilian victims of war and the benefits it brings has not changed significantly over a period of 7 years, nor did the legal framework governing this status.¹⁷⁰

Some survivors pointed out that they are not given priority in accessing health care services (which is especially important for survivors with serious illnesses) in the same way as, for example, people with war-related disabilities, because they do not receive similar ID cards proving their status of civilian victim of war in various administrative procedures. Although some health care institutions accept ID cards

issued by war victims' associations as confirmation of the status, the practice is not uniform. An even bigger problem, however, is the unequal scope of rights granted.

"We have problems when we go to the doctors. I went to XXX, to see a doctor in a place where I am registered and can make the tests, I was ill. I have the right, all the rights not to wait, and there is a sign that reads "people with war-related disabilities shall have priority". I want the civilian victims of war to also have that advantage."¹⁷¹

"There are disabled people and these other categories that are entitled, civilian victims of war and women victims of war should also be entitled. They have all the rights, we have nothing. They are entitled to medical treatment and housing and medical spa therapy. I need an orthopaedic aid, but I can't afford one financially."¹⁷²

Most survivors who have children also need them to receive certain benefits based on their parents' status as civilian victims of war. They state that unlike other categories, children of civilian victims of war do not get the necessary benefits. Most survivors involved in the research are deeply concerned about their children's future, especially with respect to education and future employment, which is actually a fear for their children's livelihood. In this sense, some participants state that it would be desirable for the civilian victim of war status-related, mainly financial allowances, to be inherited as a pension or similar benefits.

In a conversation with Saliha Đuderija, Assistant Minister for Human Rights and Refugees of BiH, it was underlined that training and employment programmes for civilian victims of war do exist but are not adequate.¹⁷³ She also stated that support to families of civilian war victims is important in the context of the economic destiny of their children and that it is really necessary to provide

167 E-mail communication with Ajna Jusić, President of Association Forgotten Children of War (28 October 2021).

168 Ibid.

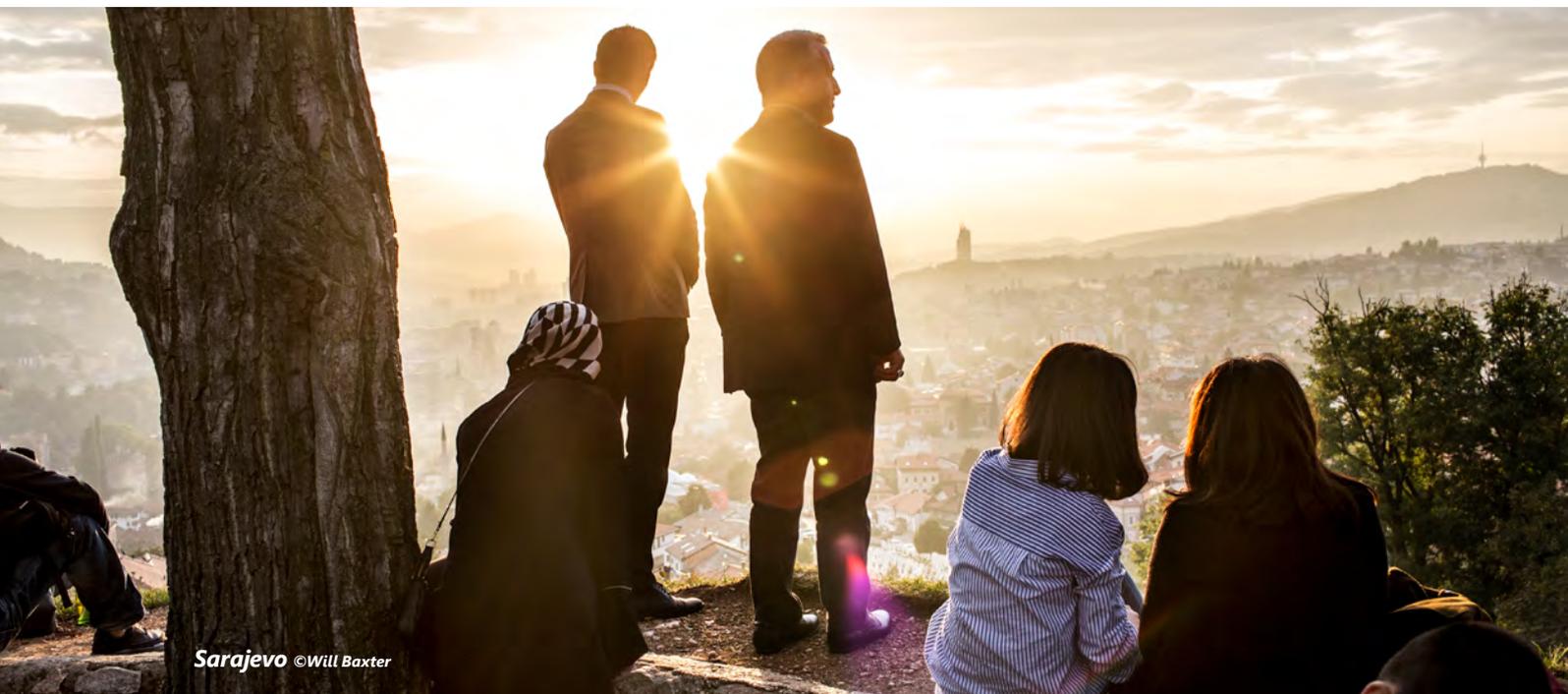
169 Focus group with survivors of conflict-related sexual violence (Prokosovići, 10 and 11 June 2021).

170 See also section 14.1.

171 Focus group with survivors of conflict-related sexual violence (Prokosovići, 3 and 4 June 2021).

172 Statements by a survivor from the Brčko District BiH. Focus group with survivors of conflict-related sexual violence (Prokosovići, 10 and 11 June 2021).

173 Interview with Saliha Đuderija, Assistant Minister with the BiH Ministry of Human Rights and Refugees (interview conducted on Zoom, 18 May 2021).



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education and employment benefits for children of civilian victims of war, primarily because parents survivors are unable to provide the necessary conditions for education and work of their children based on social allowances they receive.¹⁷⁴

"I need to send my children to school and get them educated, but what can I do, there is no scholarship, no job, nothing."¹⁷⁵

"We ask for some scholarships for our children that would be valid for schools and faculties, so that when they leave their town and move elsewhere to study, they do not have to pay rent and tuition fees and everything else. We have this problem and we want help. We also have smart, intelligent children who want to get educated, but unfortunately we do not have the prerequisites for that."¹⁷⁶

"The allowances we receive are a social programme. We want and strive for a guarantee that my minor child can inherit this allowance of mine. I call it a pension and I wish he could inherit that pension or the wife if she is over 50, not employed and so on. Because if I were to die now and they take away my allowance, I wonder who will take care of my family?"¹⁷⁷

A problem also evident from the stories of all focus groups participants is that they mention experiences that indicate an insensitive treatment of survivors by employees of government institutions, health care institutions, police stations, and institutions that provide services. Although there are several positive examples, most survivors, when exercising certain rights or using health or other service, regularly encounter inadequate treatment which, unfortunately,

174 Ibid.

175 Focus group with survivors of conflict-related sexual violence (Prokosovići, 3 and 4 June 2021).

176 Ibid.

177 Ibid.

in most cases triggers re-traumatisation and reinforces the feeling of social unacceptability among survivors. In some cases, the unpleasant experiences deterred survivors from seeking help or they turned to NGOs for it.

“Once when I asked for my rights, the person said ‘Where have you been for 26 years?’ At that moment, of such misunderstanding, such lack of support, I felt awful.”¹⁷⁸

“Well, it’s been 30 years, let it go already.”¹⁷⁹

The problem is particularly pronounced in the Brčko District, where survivors report a number of difficulties in communicating with the competent services.¹⁸⁰ Thus, among other things, survivors fear turning to competent services, as they regularly encounter misunderstanding and rudeness.

They said that during interviews with the commission in charge of determining their status, inappropriate and re-traumatising questions and comments can be heard, such as: “How come this happened to you?” or “How come you never reported this so far?”. A man who was raped at the age of 15 was asked by the commission to “describe the sex a little”.

After learning that the members of the commission asked the survivors “whether they enjoyed sex during rape and how did they not get pregnant if they were raped three times”, the Association Naš glas from Tuzla filed a complaint in 2018 with the BiH MHRR and subsequent revision actions were taken, however, the Association is unaware of their outcome.¹⁸¹

“We need a way for them to help us, for our association to survive, to function. Associations are important to us, because through associations, many victims got empowered and they realised the right to status, but we must also have assistance and higher visibility.”¹⁸²

Unfortunately, positive examples of adequate treatment of survivors are observed only with a few employees of public institutions, according to the participants. In the context of the problems identified in BD, for example, survivors point out that this was not the case with the Commission for the Assessment of the Status of Civilian Victims of War in the Federation.

In addition, they highlight the professional and appropriate treatment by employees of NGOs that provide psychological or legal support to survivors, as well as by a number of psychotherapists and neuropsychiatrists who cooperate with relevant NGOs and associations and are highly sensitised to work with survivors of conflict-related sexual violence. Survivors mostly mention individuals or NGOs that have played an important role in their empowerment, and most survivors feel a sense of gratitude to these professionals.

A particularly important aspect of empowering survivors is their involvement in victims’ associations and solidarity within associations. It was noted that most of the survivors in the focus groups find the necessary understanding in victims’ associations, which self-organise mainly at the local level, and that they believe that adequate advocacy of their rights can only be achieved through organised action.

In doing so, they state a number of difficulties that these associations unfortunately face in their work, which significantly complicates their activities.

Lack of funding is highlighted as a major problem. One of the consequences of financial problems is the impossibility of hiring qualified staff who would help associations in fulfilling administrative tasks, applying for funding and donations, and informing about advocacy tools. This type of assistance to associations is provided by other NGOs through their activities, but most survivors state that they would like victims’ associations to be able to carry out certain activities independently.

178 Ibid

179 Statement by a police officer to the information provided to him by the president of a local association of survivors about the specific situation of a victim of domestic violence. Discussion with survivors (Tuzla, BiH, 26 October 2021).

180 Discussion with survivors (Tuzla, 26 October 2021).

181 E-mail communication with Mirsada Tursunović, President of Association Naš glas, 1 November 2021.

182 Focus group with survivors of conflict-related sexual violence (Prokosovići, 3 and 4 June 2021).

“... when enacting any of these laws, it is very important that the victims are present. Because no one can represent us the way we can represent ourselves.”¹⁸³

“We need to be able to hire a professional under some project to work with us, because we do not have any professional staff, we are survivors and we work as volunteers.”¹⁸⁴

“We need to be in solidarity, to raise our voices together, to fight for our rights – that is the only way.”¹⁸⁵

8. Survivors’ views and priorities on forms and modalities of reparations

As noted above, the research revealed the need of the majority of survivors for both material and symbolic reparations, though they primarily understand the concept of reparations as material reparations. The importance of material reparations is evident from the fact that survivors state the need for compensation for the non-pecuniary harm suffered for reasons of dual nature – in the material sense – as a matter of livelihood needs, but also in a symbolic sense – as recognition of crime and guarantee of non-repetition.

“I believe that when they pay compensation, they will never repeat the crime.”¹⁸⁶

In discussions with the participants, it was evident that most survivors believe that individual reparations would be a desirable model that should be applied in BiH. They also point out that they still need compensation in the true sense of the word.

Survivors generally state that victims of conflict-related sexual violence should be recognised as a separate category and that legal solutions and reparations programmes should be adopted to respond to the specific needs of this category of victims. It has already

been stated that many survivors believe that certain categories have more benefits than the category of civilian victims of war.

“For now, we are just a ‘social problem’ for them.”

Many survivors state that one of the problems in achieving adequate reparative programmes for this category is the fact that victims of conflict-related sexual violence are legally in the same group as other civilian victims of war and that they exercise all their rights on that basis.

“Our category should simply be introduced into some legal framework, because when the state adopts it and as soon as we are in the law, then we have all the rights.”¹⁸⁷

“Some 90 percent of them in those parliaments, they sit there and have no idea what a civilian victim of war is, especially special categories, they have no idea what it means.”¹⁸⁸

The need was expressed for those survivors who have been beneficiaries of psychological support for years and who consider themselves empowered enough to speak publicly about their trauma, to participate in decision-making processes. Most believe that adequate legal solutions and programmes cannot fulfil their purpose without broader consultation with survivors of conflict-related sexual violence.

It is interesting to analyse the period from the enactment of the legislative framework for civilian victims of war, when most victims were not ready to talk about war sexual violence, until today, and to see that most survivors who have had continuous psychological support for years and

183 Ibid.

184 Ibid.

185 Ibid

186 Ibid

187 Focus group with survivors of conflict-related sexual violence (Prokosović, 10 and 11 June 2021).

188 Ibid



Rural, BiH ©Will Baxter

who are sufficiently empowered now advocate a central position for victims when it comes to making decisions about their rights and needs.

It is interesting that all the participants expressed fear related to the questionable lifespan of the possibility of exercising their rights through the status of a civilian victim of war. The participants state that they believe that the rights they exercise as civilian victims of war should be of a permanent nature and should not be subject to revision. They state the fear of the continuous uncertainty as to whether they will be able to exercise their rights on the basis of the status of a civilian victim of war or whether some new legal solutions will abolish such rights.

“Don’t just enact laws on what civilian victims of war need, when you never visited families, sat down with them and said “tell us what you need, explain what would make life easier for you.”¹⁸⁹

They are also constantly worried about the fact that the allowances they receive from the entity budgets will be reduced due to possible crises and budget cuts of the entity governments. Similar claims were encountered in the 2014 Medica Zenica survey, which states that difficult economic conditions contribute to the survivors’ constant concerns and fear that their

civilian of war victim status will be revoked, as well as their rights, which indicates the fact that survivors have been living with this fear for many years now.¹⁹⁰

“We need permanent solutions to have a trace and that no one can revoke them. A permanent solution that they cannot revoke.”¹⁹¹

“I am speaking on my behalf. If they revoke it, they’d better kill me.”¹⁹²

The fear of the short-term nature of the rights exercised as a civilian victim is further exacerbated by the fact that many survivors are unable to obtain pecuniary compensation through the courts, and social allowances remain the only source of income for them. There is a fear that most survivors will never see their perpetrators being prosecuted and, therefore, they will not be able to receive compensation for non-pecuniary damage because they are aware that this is currently the only form of compensation they can get in BiH due to the lack of compensation programs and the problem of application of the statute of limitations to compensation claims filed in civil proceedings.¹⁹³

Most participants thus state that access to compensation should also be provided to those survivors who have not and for various reasons will not testify in criminal proceedings.

189 Ibid.

190 Medica Zenica and medica mondiale (n 64) 110.

191 Focus group with survivors of conflict-related sexual violence (Prokosovići, 3 and 4 June 2021).

192 Focus group with survivors of conflict-related sexual violence (Liplje, 18 June 2021).

193 See in this sense also section 14.2.2.

On the other hand, those survivors who have testified in criminal proceedings and who have been awarded non-pecuniary damages in criminal or subsequent civil proceedings, have high hopes for the realisation of these rights, but are equally aware of the fact that in several existing cases enforcement proved problematic.

“These women should also get compensation in some way. It doesn’t have to be compensation equal to that of a woman who participated in the proceeding, I am aware that she was more exposed to trauma and everything, but these other women who cannot identify the perpetrators should also get it.”¹⁹⁴

“I’d say that there are many of us who will not take part in the trials and will not receive compensation. We have many survivors who could never, nor will they ever identify the perpetrators, they were masked, for example. A fund should be created to provide some minimal financial assistance for these women who cannot identify them, cannot take part in the court process...”¹⁹⁵

They state that most perpetrators will not only refuse to “voluntarily” pay compensation but will try to do everything to “cover up” their assets. The inability to collect even in enforcement proceedings for survivors is an additional discouragement and a message that they have been betrayed once again by the system – in their view by the “state”.

“They will acquit him because he has no assets, he will transfer them all to his closest people, they know about everything that was done. He will give the land to his children. They know very well what they did, they know about those rights. They knew very well what they were doing.”¹⁹⁶

“At the state level, there should be more awareness of the kind of life we lead and ways to help us, there should be more work at the state level, to provide us protection.”¹⁹⁷

The majority of the participants believe that their problems can only be solved by state authorities and that the greatest responsibility for their situation lies with the state. It is noteworthy that the term “state” is generally used to refer to both entity and state level authorities, but the discussions revealed that a systemic solution at the state level would greatly contribute to restoring trust in the system and a sense of recognition and protection. On the other hand, in discussions with survivors from the RS entity, the solution that would seem desirable to them is to harmonise benefits at the entity levels.

The participants in this focus group did not mention the need for a unified solution at the state level for all survivors, but mainly spoke about the need to harmonise monthly allowances in all administrative units.¹⁹⁸

When it comes to symbolic reparations, participants of the focus groups highlighted criminal prosecution of perpetrators and the establishment of truth as important reparative measures. Most of the participants consider prosecution of perpetrators a measure of satisfaction and justice. Almost all of them believe that with a conviction and guilty judgment of the perpetrators, a certain burden that survivors bear as victims would be transferred to the perpetrators.

However, the vast majority of participants fear that many perpetrators will not be prosecuted during their lifetime, given that survivors die, as well as the fact that they would not be able to identify them and testify in court as many perpetrators are unknown to the survivors. An additional problem are those perpetrators who are known to the survivors, but who died or are

194 Ibid.

195 Ibid.

196 Focus group with survivors of conflict-related sexual violence (Prokosovići, 3 and 4 June 2021).

197 Focus group with survivors of conflict-related sexual violence (Prokosovići, 10 and 11 June 2021).

198 The survivors stated that they receive a monthly allowance (as social assistance) of BAM 170. As they point out, this amount cannot be enough even for the monthly medicines. Due to all the above, the victims from the RS want to be equal to all other victims in BiH, that their monthly allowance be the same as that in the FBiH. Focus group with survivors of conflict-related sexual violence (Republika Srpska, 16 August 2021).

inaccessible to law enforcement in BiH. As explained before, this fear is additionally linked to the exercise of the right to compensation, which survivors consider necessary and important in addition to prosecuting the perpetrator. The perception of survivors in focus groups that prevails is that public recognition of crimes and memorialisation would contribute to the achievement of justice, satisfaction and their easier integration into society.

*"The worst thing for me was that I was held captive in my family home. Even today I feel humiliated and insufficiently recognised in society and I feel the pain and the fear. The authorities are not doing anything to protect us, to recognise us, so that it is clear, that we are the first to be protected, to be recognised in society, among the people. We are only recognised by our families, even not all of us. The community does not recognise us, they turn their heads."*¹⁹⁹

An interesting finding from the research is that survivors have mixed feelings about the concept of public apology. There are conflicting statements by survivors when it comes to apologies and they particularly depend on the answer to the question 'Where does the apology come from?' A number of participants perceive public apology as an apology of the perpetrator and show a pronounced revolt towards this type of apology.

*"That apology means nothing to me. All the things they have done. Everyone knows."*²⁰⁰

*"And you say they should apologise. It means nothing to me. Not to me, not to anyone. Their apology means nothing to me."*²⁰¹

On the other hand, when the apology is perceived as an acknowledgement of the violations committed coming from the state, institutions, government actors, or the local community, we encounter more positive reactions from survivors.

*"Well, I personally would need that last one, that apology, the confession that they committed a crime."*²⁰²

*"Why I say that it is important for them to admit a war crime that they so strongly deny. Everyone does, unfortunately. For me personally, I would ask for both an apology and an acknowledgment of a war crime."*²⁰³

*"It doesn't have to come only from the perpetrator, it can also come from the state."*²⁰⁴

9. Reflections from Facilitating Survivors' engagement in the Assessment of Survivors' Perceptions and Expectations with respect to Reparations

Focus groups were organised by the Association Vive žene from Tuzla, in cooperation with TRIAL International. The last focus group with victims from the RS entity was organised in cooperation with the Association Snaga žene from Tuzla. During the preparation process we encountered a lower response from potential participants than originally planned. The reasons were the disinterest of the survivors to discuss the consequences of traumatic experiences which they consider to have a re-traumatising effect, lack of belief in the possibility of achieving change, as well as illness of some survivors that prevented them from attending.

For those participants who dared to respond to the project and discuss the consequences of conflict-related sexual violence, as well as their current needs in the context of reparations, despite recalling the event that marked their lives, they readily, willingly and openly discussed all questions from the questionnaire. Since the focus groups were conceived in such a way that the survivors in the introductory part got acquainted with the theoretical aspect of reparations, survivors showed

199 Focus group with survivors of conflict-related sexual violence (Prokosovići, 3 and 4 June 2021).

200 Focus group with survivors of conflict-related sexual violence (Liplje, 18 June 2021).

201 Ibid.

202 Ibid.

203 Ibid.

204 Focus group with survivors of conflict-related sexual violence (Prokosovići, 10 and 11 June 2021).

their engagement even at this stage by asking specific questions and sharing with us current problems they face, which the legal advisor of TRIAL International was able to address.

In this way, they showed that regardless of the years that have passed since the war, their current age and the lack of support from institutions, they still believe and want to participate in all processes concerning the promotion of survivors' rights and presenting a current realistic picture of their position in society.

During discussions with the participants about the questionnaire, we realised that it was difficult for survivors to present their current needs without recalling the details of the traumatic events. Depending on the situation and whether the

traumatic moment referred only to the individual speaker or the entire focus group, in some situations we took a break to avoid further emotional strain for the participants or we had a psychotherapist of the Vive žene Association assist a specific individual.

After a break and return to the discussions about survivors' perceptions of reparations, participants continued to actively provide information and express their views, further demonstrating their commitment and belief that such a study could be a potentially useful advocacy tool and lead to necessary legislative framework changes.

Although the views on the study itself were mostly positive, the opinions of some the participants stand out, who felt that they no longer had a reason to believe in any processes of improving their rights as survivors. Over the years, they have repeatedly been disappointed in unfulfilled promises, mostly by political actors during election campaigns, which then negatively affected survivors and contributed to a renewed loss of trust in the system.

Ultimately, the participants were also satisfied with the training opportunity on reparations, which in their opinion is needed for wider audiences. Although every recollection of traumatic experiences triggered intense emotions, upon completion of the focus groups, survivors expressed satisfaction that there still exist organisations that care about improving their rights and their general wellbeing. They also expressed gratitude for participating and taking an interest in their needs as they know best what are the daily challenges they face and the practical solutions to the problems identified.

10. Main risks perceived by conflict-related sexual violence survivors

The security risks associated with accessing reparations are reflected in several examples shared by survivors in focus group discussions. One example is the issue of housing and the return of survivors to the communities in which they lived before and during the war, due to the risk of re-traumatisation, fear and distrust in such communities, as explained earlier. This distrust and fear for their own safety are also caused by the fact that many perpetrators, or witnesses of certain war events who were not the direct perpetrators, still live in those areas.



*Second focus group in Prokosovići,
4th June 2021 ©TRIAL International*

The political atmosphere in BiH, the fragmentation of the system into entities and the Brčko District, and the incendiary war rhetoric used daily in public space, do not contribute to reducing the fear and resistance of survivors of returning to their previous communities.

Most survivors state that although they do not feel hatred towards members of other ethnic groups, they feel extreme distrust and are unable to return and live in those local communities where their neighbours continue to deny crimes, glorify convicted war criminals, erect monuments and memorials. They state that it is necessary to insist that the facts be established and acknowledged, criminals be found and prosecuted, and that the victims be honoured. Most survivors, however, still say that reconciliation is important and necessary, and that it is important to pay tribute to all victims, regardless of their nationality.

*"There is one God above us all, irrespective of our name or origin. In my house, we never knew of Catholics, Orthodox or Muslims, just human beings."*²⁰⁵

As for obtaining compensation through criminal proceedings, some survivors state that they fear testifying because they are concerned that information about their identity may leak. Most survivors have no fear of confronting the perpetrators, rather their fear of testifying largely relates to the possibility of family members and the communities in which they live learning about their traumatic experiences. The most pronounced fear is that children will find out, as was explained in section 5.4.

*"I told you that my children don't know about it, nor will they ever find out, as far as I'm concerned. That's why I moved out of the town. It is a rule of our association – whatever is said in our office must never leave the office. That is very important for us..."*²⁰⁶

A useful approach to address the problems of stigmatisation and treatment of survivors of conflict-related sexual violence, according to the participants, is implementation of sensitisation

campaigns that should target survivors, as well as all citizens and those who work or have contact with survivors of conflict-related sexual violence. Appropriate training for professional staff such as health workers, social workers or persons involved in court proceedings will, according to the participants, raise awareness and the necessary sensitivity to work with this category.

Ultimately, there is a particularly pronounced fear among almost all the participants that they will not see justice served or their rights realised. When asked how they see themselves in five years, the vast majority of participants answered that they do not think they will be alive. This fear is related to the psychological and physical consequences that most survivors cope with on a daily basis.

The answer to this question also shows the perception of the survivors on the possibility of improving the reparations system in BiH. If most of them do not believe that they will see justice served and their rights realised in the next five years, it is clear that they do not believe that the system will improve, that new legal provisions will be enacted or that certain programmes will be adopted specifically adjusted to their needs.

Here again, survivors stated that this Study is proof that only NGOs are still interested in their problems and that the need for a study that would include their perception of reparative mechanisms in BiH should have come from state institutions.

*"I think it would be a very good idea to do trainings with representatives of institutions. Not only with those people who are in some important positions, but also ordinary people. To make them aware of the kind of life we live and everything we have to go through. How can people understand us, first our family, our household, our community, our surroundings? They also need to be given some guidelines on how to treat us."*²⁰⁷

²⁰⁵ Focus group with survivors of conflict-related sexual violence (Republika Srpska, 16 August 2021).

²⁰⁶ Ibid.

²⁰⁷ Focus group with survivors of conflict-related sexual violence (Prokosovići, 3 and 4 June 2021); Focus group with survivors of conflict-related sexual violence (Prokosovići, 10 and 11 June 2021).



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V. AVENUES FOR REPARATIONS

11. International human rights obligations, legal and policy frameworks for reparations

The right to reparations and the correlative obligation of the state to provide victims of conflict-related sexual violence with access to this right is based on the right to an effective remedy, enshrined in a number of international treaties ratified by Bosnia and Herzegovina. Among the most important regional and international conventions in this regard are the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 13); International Covenant on Civil and Political Rights (Articles 2); UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) (Article 14); and UN Convention on the Elimination of All Forms of Discrimination against Women (Article 2).²⁰⁸ The respect and implementation of internationally recognised human rights, including the aforementioned conventions, is also guaranteed by the BiH Constitution.²⁰⁹

As for criminal prosecution of conflict-related sexual violence committed in BiH at the international level, it fell under the jurisdiction of the ICTY, whose work has already been discussed in section 4.1. The establishment and operation of the ICTY marked a global milestone in the history of international criminal law regarding the prosecution of conflict-related sexual violence.²¹⁰ The trial of Duško Tadić²¹¹ was the first case of war crimes prosecution before the ICTY, and also the first case involving charges of sexual violence.²¹² In the case of Dragoljub Kunarac, the ICTY qualified for the first time rape as a crime against humanity, and it was the first time that an international tribunal prosecuted a crime qualified as sexual enslavement.²¹³ The ICTY Statute, however, did not provide for a mechanism to obtain compensation or any other form of reparation. Rule 106 B of the ICTY Rules of Procedure and Evidence only provides that victims of crimes adjudicated by the ICTY “pursuant to the relevant national legislation (...) may bring an action in a national court or other competent body to obtain compensation”.²¹⁴

There was never a recognition of responsibility or an apology by the authorities or individual armed formations.

²⁰⁸ Various soft law instruments, such as United Nations General Assembly resolutions and the jurisprudence of various international and regional human rights bodies, have clarified and developed in recent decades the concept and relevant standards related to reparations under human rights conventions. In this regard, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law stand out; UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law (16 December 2005) A/RES/60/147.

²⁰⁹ Annex I to the Constitution of BiH lists 15 international legal treaties for the protection of human rights and fundamental freedoms that are directly applicable in BiH. Article II/4 of the BiH Constitution stipulates that all persons in BiH, without discrimination, shall have the right to their enjoyment, whereas Article II/1 stipulates that BiH and both Entities shall ensure the highest level of internationally recognised human rights and fundamental freedoms.

²¹⁰ Together with the International Criminal Tribunal for Rwanda, the ICTY has since its inception played a historic role in developing case law to prosecute these crimes, establishing and developing key definitions of sexual violence, and developing elaborate rules of procedure that take into account the specific nature of crimes and the consequences for the victims.

²¹¹ Former President of the Local Bord of Serb Democratic Party (SDS) in Kozarac.

²¹² More information available at the ICTY website: <https://www.icty.org/en/features/crimes-sexual-violence/landmark-cases>

²¹³ Ibid.

²¹⁴ Proposals from 2000 to amend the Rules so as to expand the scope of compensation and participation of victims have been rejected on arguments that this would require an amendment to the Tribunal's Statute and prolong the already lengthy proceedings before the ICTY. Instead, the President of the ICTY at the time proposed the establishment of an international claims commission, which was never formed. See UNSC, ‘Letter dated 2 November 2000 from the Secretary-General addressed to the President of the Security Council’ (3 November 2000) UN Doc S/2000/1063; Brammertz and Jarvis (n 24) 290.

The entire process of transitional justice has been reduced to the prosecution of crimes committed during the war.

Regarding potential options for the protection of the rights of victims of sexual violence from BiH and access to reparations at the international level, the regional system of human rights protection before the European Court of Human Rights (ECtHR) should be mentioned, as well as the ability to address UN human rights treaty bodies. In this regard, the Committee against Torture (UN CAT), the Committee on the Elimination of Discrimination against Women (UN CEDAW) and the Committee on Human Rights (UNHRC) stand out.²¹⁵

In the last two years, UN CAT and UN CEDAW have adopted two decisions against Bosnia and Herzegovina concerning the rights of survivors of conflict-related sexual violence, which will be discussed in section 14.2.1. These decisions are important both for the relevant victims and for BiH, as well as for victims globally.²¹⁶ The mere existence of decisions by these two UN bodies indicates that survivors in BiH have encountered obstacles to securing their rights that have shown to be unsurmountable at the domestic level without outside condemnation, and without issuing recommendations and demands towards BiH to improve its current legal framework and practice.²¹⁷

12. Government and other duty-bearers position

In terms of acknowledging and taking responsibility for crimes committed, although national courts, especially the Court of BiH, and the ICTY have prosecuted numerous perpetrators of conflict-related sexual violence crimes, including government officials, there are few examples of guilty pleas²¹⁸ and we cannot talk about any acknowledgement of responsibility at a higher level. Numerous perpetrators who admitted responsibility for the crimes committed in criminal proceedings, such as the wartime president of the Republika Srpska, Biljana Plavšić²¹⁹, later denied their confessions in public speeches.²²⁰ This shows that the confessions often aimed for personal gain – a reduction of prison sentence – rather than genuinely taking responsibility for the crimes committed or apologising to the victims.

Consequently, there was never a recognition of responsibility or an apology by the authorities or individual armed formations, which the survivors have been waiting for years since the war ended and which in itself would be of great importance to them as a form of symbolic reparation and a measure of satisfaction. In addition, due to the lack of recognition of responsibility, survivors often face the problem of denial of crimes, public decorations and glorification of convicted war criminals, which further deepens their trauma.²²¹

Given the above, it is not surprising that power leaders were also not willing to provide victims with an opportunity for compensation and other forms of reparations which would be based on an admission of responsibility for the damage caused. Even where

²¹⁵ These options are available to victims in case of suspicion of violation of their rights after the exhaustion of all effective remedies in BiH, which may or may not include the Constitutional Court of BiH.

²¹⁶ *Mrs A v Bosnia and Herzegovina* (2 August 2019) Communication No. 854/2017 CAT/C/67/D/854/2017; *SH v Bosnia and Herzegovina* (9 July 2020) Communication No. 116/2017 CEDAW/C/76/D/116/2017.

²¹⁷ Furthermore, there are a number of other UN reports expressing concern about the situation of victims of conflict-related sexual violence, such as UN CEDAW, 'Concluding observations on the combined 4th and 5th periodic reports of Bosnia and Herzegovina' (30 July 2013) CEDAW/C/BIH/CO/4-5 para 9, 10, 22(b), and UNCAT 'Concluding observations on the sixth periodic report of Bosnia and Herzegovina' (22 December 2017) CAT/C/BIH/CO/6 para 16-20.

²¹⁸ An example of such a confession is the case of *Prosecutor v Dragan Zelenović* (Sentencing Judgment) ICTY-96-23/2-S (4 April 2007), in which, for the first time in the history of the ICTY, a perpetrator admitted and confirmed what had happened to non-Serb women in Foča in 1992, and this confession was assessed by the Trial Chamber as "particularly important for establishing the truth and promoting reconciliation"; Brammertz and Jarvis (n 24) 287.

²¹⁹ *Biljana Plavšić* (n 37) para 51.

²²⁰ Dženana Halimović, 'Plavšić povukla priznanje krivnje' [Plavšić withdraws guilty plea] *Radio Slobodna Evropa* (8 February 2009). <<https://www.slobodnaevropa.org/a/1381132.html>> Accessed 21 September 2021; Milica Stojanović, Sven Milekić, Emina Dizdarević, 'Neizvjesna sudbina nasleđa Haškog tribunala po završetku posljednjeg suđenja' [Uncertain fate of the legacy of the Hague Tribunal after the last trial] BIRN (23 June 2021) <<https://balkaninsight.com/2021/06/23/neizvesna-sudbina-nasleđa-haskog-tribunala-po-završetku-posljednjeg-sudenja/?lang=sr>> Accessed 21 September 2021

²²¹ For more information, see Lejla Gačanica and Caroline Finkeldey, 'Calling War Atrocities by their Right Name' (TRIAL International and forumZFD 2019) 9, 12, 13. See also section 10.1.

there are established administrative programmes providing survivors with access to certain reparative measures, they are envisaged within the social policies of respective entities, as a measure to support this vulnerable category of the population. There is a lack of any, even implicit, causal link between the responsibility of a respective entity for the damage caused and the effective payment of money to victims by that entity, in the name of that responsibility.²²²

In addition, objective budget problems and the growing number of vulnerable social categories that BiH is facing have also a negative impact on meeting the needs of survivors of conflict-related sexual violence. In that sense, the authorities in both entities warned of “persistent economic challenges and the thankless task of making trade-offs in the process of balancing various social payments”.²²³

All of the above illustrates the atmosphere in which survivors live, as well as their position. Their rights, including the right to reparations, are clearly not a priority for government officials. This is also indicated by the slow process through which the relevant legislative framework and case law have been created and improved from the end of the war until today. The views of BiH authorities on reparations and the need to improve survivors’ rights have rarely been made public. Apart from isolated examples of individuals interested in this population, they are usually expressed in statements made during election campaigns. The following is a description of the previous successful and unsuccessful attempts to regulate the status and rights of survivors of conflict-related sexual violence.

13. Relevant domestic legal and policy frameworks

13.1. Domestic legal and policy frameworks relevant to CRSV

The war in BiH was stopped by the signing of the Dayton Peace Agreement on 21 November 1995. This agreement did not contain a comprehensive and strategic approach to transitional justice. Even 25 years later, government officials have not managed to agree and adopt a transitional justice strategy, and all attempts in that direction have failed.²²⁴ For years, the entire process of transitional justice has been reduced to the prosecution of crimes committed during the war, which has also not been conducted satisfactorily, a reason why many victims will not face the long-awaited access to justice.²²⁵

The majority of survivors of conflict-related sexual violence are women, making them additionally affected by the fact that the socio-economic position of women in BiH is generally less favourable than that of men.²²⁶ Despite a solid legal framework on protection against discrimination and the promotion of gender equality, the situation in practice is unsatisfactory. In November 2019, UN CEDAW²²⁷ pointed in its concluding observations regarding BiH, in addition to recognising the problem of lack of reparations for victims of war crimes, to several general structural problems that negatively affect survivors of conflict-related sexual violence.

222 For a detailed elaboration of the nature of these administrative reparation mechanisms, see section 14.1.

223 War-related payments (together with the allowances for war veterans, civilian victims of war and their families) amount to around 16% of the annual budget spending in FBiH and over 10% in the RS. However, civilian victims of war have significantly lower allowances than military victims; Amnesty International, ‘We need support, not pity’ (n 7) 38-39.

224 For more information on this and the attempt to adopt the Transitional Justice Strategy prepared at the beginning of the last decade by an expert working group under the auspices of the UNDP program in BiH, see, for example, TRIAL International, Women’s International League for Peace and Freedom, The Association of Genocide Victims and Witnesses, The Association Movement of Mothers of Srebrenica and Žepa Enclaves, ‘General Allegation on the Situation in Bosnia and Herzegovina to the Special Rapporteur on Truth, Justice, Reparations and Guarantees of Non-recurrence’ (2014) 6-8, available at <https://trial.ba/wp-content/uploads/2016/02/TRIAL_BiH_GA_SRTJ_Feb2014.pdf> Accessed 1 October 2021.

225 Lejla Gačanić, ‘In-Between Peacebuilding and State-Building: 25 Years of the Dayton Peace Agreement’ (TRIAL International 2020) <<https://trialinternational.org/latest-post/dayton-peace-agreement-25-years-later-what-legacy-for-bosnia/>> Accessed 11 August 2021

226 For a detailed overview of statistical data that confirms this conclusion, see, for example, the Agency for Statistics of Bosnia and Herzegovina, ‘Women and Men in Bosnia and Herzegovina, Thematic Bulletin ISSN 1840-104X’ (2020).

227 UN Convention on the Elimination of All Forms of Discrimination against Women, which BiH took over by succession on 1 September 1993, comprises an integral part of the Constitution of BiH on the basis of Annex 1 to the Constitution of BiH.

Thus, UN CEDAW, among other things, expressed concern about the high rate of violence against women and insufficient access to free legal aid for women, especially those belonging to disadvantaged groups or living in rural areas.²²⁸ Furthermore, the general problems of the complex socio-political system and the deficient and non-harmonised legal system that Bosnia and Herzegovina is facing have a negative impact on the level of protection of the rights of survivors.²²⁹

The prosecution of war crimes in BiH, including sexual violence committed during the war, takes place before 17 different courts and prosecutor's offices, in accordance with different criminal procedure legislation.²³⁰ The cases are being prosecuted in accordance with two different criminal codes –the Criminal Code (CC) of BiH from 2003 and the Criminal Code of the former Socialist Federal Republic of Yugoslavia (SFRY) from 1976. The courts in both entities and in the Brčko District exclusively apply the SFRY Criminal Code, and only handle war crimes cases against civilians and prisoners of war. The Court of BiH also applies the same Code in relation to war crimes and the crime of genocide, whereas it applies the BiH Criminal Code to crimes against humanity. The provisions of the SFRY Criminal Code also criminalise genocide, whereas they do not recognise crimes against humanity or command responsibility.

The only forms of sexual violence explicitly provided for in the SFRY Criminal Code are coercion into prostitution and rape as a war crime against the civilian population (Article 142). Sexual violence can be considered prohibited in an implicit manner, for instance, based on Article 144, which criminalises

torture, inhuman treatment and infliction of great suffering, or violation of bodily integrity or health as a war crime against prisoners of war.

Therefore, this CC lacks a wider range of crimes of sexual violence known under international law, including sexual enslavement and forced impregnation, as well as widespread and systematic sexual violence which could be qualified as a crime against humanity.²³¹ Chapter XVII of the BiH Criminal Code, on the other hand, provides for war crimes, crimes against humanity and genocide. The 2015 amendments to this Code brought the definition of the crime of sexual violence as a form of war crimes against civilians and crime against humanity in alignment with UN CAT recommendations²³², i.e., international standards and jurisprudence of international courts.²³³

Article 172 (1) (g) or Article 173 (1) (e) of the CC BiH qualify as a crime against humanity or a war crime against the civilian population, subject to other conditions, acts of forcing another person to have sexual intercourse or an equivalent sexual act (rape), and in the case of crimes against humanity, also sexual enslavement, forced prostitution, forced impregnation, forced sterilisation or any other form of severe sexual violence.

In terms of reporting war crimes by survivors, the estimated number of over 20,000 victims of conflict related sexual violence appears to be far higher than the number of victims recorded to date in administrative or judicial proceedings, but also in informal records of victims' associations and NGOs. For example, in the period from 2004 to 2016, a total

228 UN CEDAW, 'Concluding observations on the sixth periodic report of Bosnia and Herzegovina' CEDAW/C/BIH/CO/6 (12 November 2019) para 13.

229 In this light, see also section 3 – Context.

230 Judicial proceedings can be conducted at the state level before the Court of BiH, at the entity level – before ten cantonal courts in the FBiH and five district courts in the RS, as well as before the Basic Court of the Brčko District.

231 For more information, see OSCE, 'Combating Impunity for Conflict-Related Sexual Violence in Bosnia and Herzegovina: Progress and Challenges. An analysis of criminal proceedings before the courts of the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District BiH between 2004 and 2014' (2015) 18-19; OSCE, 'Combating Impunity for Conflict-Related Sexual Violence in Bosnia and Herzegovina: Progress and Challenges. An analysis of criminal proceedings before the Court of Bosnia and Herzegovina between 2005 and 2013' (2014) 31, 32.

232 UNCAT, 'Concluding observations on the combined second to fifth period reports of Bosnia and Herzegovina' (20 January 2011) CAT/C/BIH/CO/2-5 para 9.

233 Specifically, the previous definition required the fulfilment of the element of coercion to establish responsibility, i.e., that the crime was committed "by using force or threat of immediate attack to her life or body or life or body of a person close to her". Under current law, proving the element of coercion or threat of force is unnecessary, rather, it is necessary to focus on whether the victim had any realistic possibility of not consenting to the act. This follows the relevant international standards according to which the mere existence of coercive circumstances in times of armed conflict negates the victim's normal sexual autonomy and his or her ability to refuse consent 'to sexual intercourse'. For more information, see: TRIAL International, 'Rape Myths in Wartime Sexual Violence Trials – Transferring the Burden from Survivor to Perpetrator' (2017) 35; OSCE, 'Towards Justice for Survivors of Conflict-Related Sexual Violence in Bosnia and Herzegovina: Progress before Courts in BiH 2014–2016' (2017) 16 and on.

of 116 final war crimes cases included allegations of conflict-related sexual violence.²³⁴ In administrative proceedings, available data indicate the number of close to 1000 CRSV survivors with recognised status of a victim of sexual violence in the FBiH, and the number of 120-200 victims in the Republika Srpska.²³⁵ On the other hand, for example, the Association of Camp Detainees of BiH, which has more than 20,000 members, has a total of only 159 victims who reported being victims of conflict-related sexual violence.²³⁶ Analysing the potential causes of this discrepancy, it can be concluded that one of the key reasons is the stigmatisation that has prevented or still prevents numerous survivors from talking about what happened to them.²³⁷

As our society has taken the shape of a patriarchal society in its treatment of women, rape was and still is, to some extent, considered a disgrace and humiliation for the victim but also for her immediate community, which plays a significant role in the victim's decision to keep silent or to speak out about the crime suffered.²³⁸ This problem is even more pronounced in relation to men victims of conflict-related sexual violence who, due to deep-rooted gender stereotypes, talk about the trauma suffered even less often.²³⁹ All of the above still negatively affects survivors and their decision to seek justice by reporting a crime or to seek other rights that they are entitled to.²⁴⁰

Ultimately, for those survivors who report sexual violence for the purpose of prosecution or acquiring victim status, as well as for those who are called to testify, adequate treatment by the competent

authorities when they are giving a statement or during the evidentiary proceedings is of great importance. The CEDAW Committee observed with regret that officials of institutions working with victims of gender-based violence, such as judges, prosecutors, police officers, and officials of relevant social welfare centres, do not have specialised gender knowledge.²⁴¹ In the procedure of proving victim status within certain administrative reparation mechanisms, unsensitized communication with victims²⁴² and/or rigorous approaches to proving that someone has suffered sexual violence proved to be problematic at times, both in the legal framework and in practice, as will be presented in section 14.1.

On the other hand, a solid legislative framework and practice has been developed in criminal proceedings to protect victims. In sexual violence cases, there is the possibility of obtaining psychological support from the relevant staff of prosecutor's offices and courts, as well as various witness protection measures such as pseudonyms, exempting the public from the main trial in part or fully, or allowing vulnerable witnesses to testify from a special room with voice and image distortion.²⁴³

Both the specific rules of evidence for these acts and their application in practice are largely adapted to international standards²⁴⁴ in terms of prohibiting the presentation of evidence of the victim's sexual life prior to the crime and specific rules pertaining to questions on victim's consent.²⁴⁵ Practices related to the mentioned support and protection measures may, however, vary depending on the judicial body before which the proceedings take place, with the

234 OSCE, 'Towards Justice for Survivors of Conflict-Related Sexual Violence in Bosnia and Herzegovina: Progress before Courts in BiH 2014–2016' (2017) 9.

235 See section 14.1.

236 Of whom 93 are women and 66 men.

237 See section 5.2.

238 Kapetanović (n 61) 13.

239 BIRN, 'Muškarci žrtve silovanja u ratu – tabu tema u BiH' [Men raped in war – a taboo in BiH] *Detektor* (24 April 2020) <<https://detektor.ba/2020/04/24/muskarci-zrtve-silovanja-u-ratu-tabu-tema-u-bih/>> Accessed 9 November 2021.

240 The CEDAW Committee also expressed concern in the aforementioned concluding observations about the insufficient reporting of cases of gender-based violence, the cause of which they find in the social stigma and lack of trust in law enforcement agencies. UN CEDAW, 'Concluding observations on the sixth periodic report of Bosnia and Herzegovina' (12 November 2019) CEDAW/C/BIH/CO/6 para 13.

241 UN CEDAW, 'Concluding observations on the sixth periodic report of Bosnia and Herzegovina' (12 November 2019) CEDAW/C/BIH/CO/6 para 13.

242 See section 7.

243 This is primarily before the Court of BiH, but progress is also visible before the courts in the entities. A detailed overview of witness protection and support measures is provided in the report: OSCE, 'Towards Justice for Survivors of Conflict-Related Sexual Violence in Bosnia and Herzegovina: Progress before Courts in BiH 2014–2016' (2017) 61.

244 For persistent challenges in this regard, see OSCE, 'Towards Justice for Survivors of Conflict-Related Sexual Violence in Bosnia and Herzegovina: Progress before Courts in BiH 2014–2016' (2017) 69-71; Delbyck, 'Rape Myths in Wartime Sexual Violence Trials' (n 66).

245 OSCE, 'Towards Justice for Survivors of Conflict-Related Sexual Violence in Bosnia and Herzegovina: Progress before Courts in BiH 2014–2016' (2017) 18.

proceedings before the BiH Court usually setting standards for other institutions. Apart from that, instances of rape myths remain, i.e. gender-based stereotypes, that pervade war-time sexual violence prosecutions in BiH.²⁴⁶



On March 1, 2006, at the BiH premiere of the film "Grbavica"²⁴⁷, a campaign to amend this law and improve the rights of survivors was officially launched under the name "For the dignity of survivors". In the towns and cities where the film was screened, activists of women's and other associations, including the survivors themselves, collected about 50,000 signatures, including of 30 women MPs at state and FBiH level, and they were finally submitted on 27 March 2006 to the Parliament of the Federation of BiH.²⁴⁸

13.2. Domestic legal frameworks relevant to reparations for conflict-related sexual violence

13.2.1. CURRENT LEGAL FRAMEWORK IN BOSNIA AND HERZEGOVINA ON THE STATUS AND RIGHTS OF VICTIMS OF CONFLICT-RELATED SEXUAL VIOLENCE

Although BiH has established certain reparation mechanisms for victims of conflict-related sexual violence in recent years in the attempt to address the needs of victims through the adoption of legislative solutions, we cannot yet say that BiH provides adequate and full support to survivors of conflict-related sexual violence in line with international standards. In BiH, the recognition of victim status (victims of war torture or civilian victims of war) is regulated in three different ways – in FBiH and RS, and in the Brčko District of BiH – by laws that primarily aim at social protection of victims as one of the vulnerable groups of society. The practical consequences of such regulation of victims' rights are seen in the unequal treatment of victims of sexual violence within BiH, depending on their place of residence. There have been three failed attempts thus far to enact a harmonising law at the state level.²⁴⁹

13.2.1.1. Legal framework in the Federation of Bosnia and Herzegovina

The key regulation in the FBiH concerning survivors of conflict-related sexual violence is the Law on the Principles of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children. Prior to 2006, survivors of conflict-related sexual violence were not recognised in the FBiH as a special category of civilian victims of war, and could only receive allowances if they could prove bodily harm of at least 60% sustained by violence.²⁵⁰ However, amendments to the FBiH law of July 2006 recognised persons who had suffered sexual abuse

246 See Kyle Delbyck, 'Rape Myths in Wartime Sexual Violence Trials – Transferring the Burden from Survivor to Perpetrator' (TRIAL International 2017)

247 See (n 116).

248 Klix.ba, 'Kampanja za dostojanstvo preživjelih' [For the Dignity of Survivors Campaign] Klix (27 March 2006) <<https://www.klix.ba/vijesti/bih/kampanja-za-dostojanstvo-prezivjelih/060327012>> Accessed 7 August 2021.

249 For more information on failed attempts to enact the law, see, e.g. Kyle Delbyck, 'Rape Myths in Wartime Sexual Violence Trials – Transferring the Burden from Survivor to Perpetrator' (TRIAL International 2017).

250 Earlier Article 54 (1) of the Law on Principles of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children, Official Gazette, 36/99.

or rape as a special category of civilian victims of war to be paid specific monthly allowances without any need to prove physical disability.²⁵¹ These legislative changes came as a result of public awareness raising and strong pressure launched through arts and a civil society campaign.

It is important to mention that amendments to the FBiH law from 2016 stipulate the role of a special, independent commission which, in determining the status of a civilian victim of war, gives an expert opinion on whether the applicant is a victim of sexual abuse and rape. The commission is made up of experts approved by victims' associations and is a rare example of an inclusive process of consulting with NGOs and victims.²⁵²

13.2.1.2. Legal framework in the Republika Srpska

The relevant law in the Republika Srpska is the Law on the Protection of Victims of War Torture, adopted in mid-2018. Prior to that, there was only the Law on the Protection of Civilian Victims of War of the Republika Srpska. This law, however, did not recognise victims of conflict-related sexual violence as a separate category of civilian victims of war. To achieve the status of a civilian victim of war, it demanded proof of "60% damage to the organism".²⁵³

Furthermore, it prescribed January 2007 as the deadline for applying for status. As a result, many survivors from this entity lived for a long time without achieving the victim status and thus without access to related rights to a monthly allowance and other benefits that were available to other civilian victims of war. Associations of war victims in the Republika Srpska took part and played an important role in the drafting and enactment of this law. For example, representatives of the Association of Women Victims of War of the Republika Srpska were directly consulted during its drafting.

13.2.1.3. Legal framework in the Brčko District of Bosnia and Herzegovina

In the current Decision on the Protection of Civilian Victims of War of BD (Article 2 (1) (a)), all persons who have suffered permanent psychological damage due to sexual abuse or rape are recognised as civilian victims of war. Survivors in the BD area were given this opportunity to have their status recognised in March 2008, when the Decision on the Protection of Civilian Victims of War was adopted. After the adoption of a new Decision on the Protection of Civilian Victims of War in 2012, only victims of wartime rape were subjected to the requirement to present evidence in the form of a final court judgment (the then Article 13 (1) (c)). In response to criticism from victims' associations, NGOs and international organisations, the Brčko District Assembly adopted amendments to the Decision on the Protection of Civilian Victims of War in June 2015 and abolished this unjustifiably restrictive requirement. The decision, however, still has its shortcomings which will be presented later in the study.²⁵⁴

13.3. Legal framework relevant for accessing compensation in court proceedings

In addition to the described access to certain reparation measures through out-of-court, administrative procedures, the legislation in BiH provides the possibility for victims to seek compensation in criminal or civil proceedings. Access to reparations in criminal proceedings is provided through compensation claim.²⁵⁵ All criminal procedure codes in BiH oblige prosecutors and judges to facilitate this process by conducting certain actions provided by law. During the hearing, the prosecutor is thus obliged to ask the injured party if he/she wants to pursue a compensation claim as part of the criminal proceeding²⁵⁶, and if the injured party fails to file a motion to do so, the Court is obliged to inform him/her about such

²⁵¹ Article 54 (3) of the Law on Principles of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children.

²⁵² Amnesty International, 'We need support, not pity' (n 7).

²⁵³ This requirement prevented access to rights for victims of rape committed in armed conflict who were often unable to provide medical evidence of physical disability and who often suffer from non-physical illnesses.

²⁵⁴ See Section 14.1.

²⁵⁵ Chapter XVII of the BiH Criminal Procedure Code, Chapter XVII of the FBiH CPC, Chapter XVII of the Brčko District CPC, and Chapter XII of the Republika Srpska CPC.

²⁵⁶ Article 86 (10) BiH CPC, Article 100 (10) FBiH CPC, Article 86 (10) BD CPC, Article 46 (1) (a) RS CPC.

possibility at the beginning of the main trial.²⁵⁷ The prosecutor is also obliged to “collect evidence pertaining to a compensation claim related to the criminal offense,”²⁵⁸ which implies primarily the obligation to issue an order for an expert assessment of the mental health harm caused to the injured party by a neuropsychiatry expert.²⁵⁹ Furthermore, the prosecutors, within their broad powers, have the possibility to identify the assets of the suspect/defendant so that a proposal for the ordering of interim measures to secure a compensation claim can then be submitted to the court in relation to those assets.²⁶⁰ The court is obliged to decide on the compensation claim in the judgment and to grant the request in full or in part, if the judgment establishes the criminal responsibility of the defendant.²⁶¹ The court may refer the injured party to civil proceedings when the data of the criminal proceedings do not provide a reliable basis for adjudication²⁶² or may ultimately refuse

to consider the request if this would significantly delay the criminal proceedings.²⁶³ With regard to the compensation claim, the court is obliged to ensure that all matters are comprehensively and fully considered.²⁶⁴

On the other hand, victims also have the possibility to initiate civil proceedings for damages suffered as a result of sexual violence, against persons responsible for committing crimes, as well as against entities and/or the state that they consider responsible on the basis of objective liability for crimes committed by members of certain military and police formations (the Republika Srpska for crimes committed by the RS or FBiH for crimes committed by the Army of BiH and the HVO). These proceedings are conducted on the basis of the provisions of the Law on Obligations taken over from the former SFRY²⁶⁵, which provides for liability for damages caused by a criminal offense.



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257 Article 258 (4) BiH CPC, Article 209 (4) FBiH CPC, Article 105 (4) RS CPC, Article 195 (4) BD CPC.

258 Article 35 (2) (g), Article 45 (2) (g) FBiH CPC, Article 43 (2) (e) RS CPC, Article 35 (2) (g) CPC BD; Article 197 (1) BiH CPC, Article 211 (1) FBiH CPC, Article 107 (1) RS CPC, Article 197 (1) BD CPC.

259 For more information on the obligations of judges and prosecutors in criminal proceedings in relation to compensation claims, see Adrijana Hanušić Bećirović, ‘Enforcement of Damage Compensation Claims of Victims of War Crimes in Criminal Proceedings in Bosnia and Herzegovina – Situation, Challenges and Perspectives’ (TRIAL International 2015) 9-10; Adrijana Hanušić Bećirović and Milanko Kajganić, ‘Imovinskopravni zahtjevi u krivičnom postupku – Priručnik za pravosudno osoblje’ [Compensation Claims in Criminal Proceedings – Judicial Handbook] (TRIAL International 2018).

260 Article 202 (1) BiH CPC, Article 216 (1) FBiH CPC, Article 112 (1) RS CPC, Article 202 (1) BD CPC.

261 Article 198 (2) BiH CPC, Article 212 (3) FBiH CPC, Article 108 (3) RS CPC, Article 198 (2) BD CPC.

262 Article 198 (2) BiH CPC, Article 212 (3) FBiH CPC, Article 108 (3) RS CPC, Article 198 (2) BD CPC.

263 Article 193 (1) BiH CPC, Article 207 (1) FBiH CPC, Article 103 (1) RS CPC, Article 193 (1) BD CPC.

264 Article 164 (2) BiH CPC, Article 178 (2) FBiH CPC, Article 75 (2) RS CPC, Article 164 (2) BD CPC.

265 Official Gazette of SFRY 29/78, 39/85, 45/89, 57/89; Official Gazette of RBiH 2/92, 13/93, 13/94; and Official Gazette of FBiH 29/03.



VI. STATUS OF IMPLEMENTATION OF REPARATIONS

| 14. Access to reparations to date

14.1. Access to reparations through administrative procedures

With respect to out-of-court methods of accessing reparations, it was previously stated that there is no comprehensive administrative reparation programme in BiH that would enable adequate compensation and comprehensive access to reparations to civilian victims of war, including victims of conflict-related sexual violence. In the absence of such a programme, victims rely on the existing complex system of social protection support, as well as on individual proceedings before criminal and civil courts.

As earlier stated, we can in general conclude that the legal solutions, even when they provide for a monthly pension for victims, do not actually provide adequate compensation for the damage suffered in the true sense of the word in accordance with relevant standards, but are primarily designed as support and social protection measures for victims of sexual violence. Several decisive factors contribute to such characterisation of the measures available. For example, access to this right is mainly linked to the place of residence in a particular administrative unit, or these provisions are incorporated into laws regulating social protection measures for vulnerable categories of the population²⁶⁶.

Most importantly, there is no causal link between the liability of the entity that pays those allowances and the damage caused – in a way that the entity acknowledges its liability for the damage and makes financial payments for the purpose of remedying that damage. In practice, in contrast, the Republika Srpska pays monthly allowances to victims who have been harmed by members of the police or military units

of the Army of BiH or HVO – for which the entity of the Federation of BiH should be responsible – and vice versa – a high proportion of victims raped by members of the police or the Army of the Republika Srpska receive allowances, as a measure of social support, from the Federation of BiH, where they now reside after they have been forced to leave their birthplaces during the war. Also, the very terms used for the allowances indicate the nature of the payment, such as “disability allowance” or “personal allowance”, whereby the legislative text makes no mention of the link between these payments and compensation of damages in the true sense of the word.²⁶⁷

It is certainly noteworthy that this kind of support is still a commendable and much-needed response to the suffering and needs of victims. However, the above analysis of the nature of these allowances leads to the conclusion that the existence of a monthly allowance system cannot exculpate BiH and its entities from their unmet obligation to provide victims with prompt, fair and adequate compensation for damages, while respecting all related requirements. Furthermore, the system has a number of deficiencies which will be discussed below.

A special problem is the absence of a legal framework that would uniformly regulate the procedure for recognising the status and rights of victims of conflict-related sexual violence throughout BiH. The non-harmonised legal framework has also led to unequal requirements for access to rights, non-harmonised standards for proving victim status, unequal scope of guaranteed rights, and unequal amounts allocated on a monthly basis for victims in the FBiH, RS, and BDBiH ranging from 137 BAM to 680 BAM (ranging from about 70 EUR to about 347 EUR). Thus, the recognition of status and associated rights in BiH differ for survivors depending on their place of residence.

²⁶⁶ In the Federation of BiH, for instance, the status of victims of conflict-related sexual violence and related rights, as previously elaborated, are regulated by the Law on the Principles of Social Protection, Civilian Victims of War and Protection of Families with Children.

²⁶⁷ In the Brčko District, the term is “civilian disability allowance”, in the Federation of BiH “personal disability allowance or monthly personal allowance”, while in the Republika Srpska it is “monthly allowance”.



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As to the amounts, in FBiH, all victims of sexual violence receive an allowance in the amount of personal disability allowance that is recognised to group I of other civilian victims of war, i.e., the group that has 100% damage to the organism and who need care and assistance of another person in their life²⁶⁸ – in 2021, it amounted to BAM 607 (about 310 EUR) per month.²⁶⁹ In the Brčko District of BiH, victims of sexual violence receive amounts equal to group II of civilian

victims of war, i.e., persons with 100% damage to the organism²⁷⁰, i.e., the amount of BAM 680 (about 347 EUR). In the RS, for victims of sexual violence during captivity, the allowance is paid in the amount of the prescribed civilian disability allowance of group IV²⁷¹ – BAM 183 (about 93 EUR), while for other victims of sexual violence the allowance is paid in the amount of the prescribed civilian disability allowance of group VI – BAM 137 (about 70 EUR).

268 Article 59 (3) of the FBiH Law on the Principles of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children.

269 Article 59 (1) and (2) of the FBiH Law on the Principles of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children stipulates that the monthly personal allowance for the first group of civilian victims of war is 70% of the base – the amount of personal disability allowance of group I veterans with war-related disabilities.

270 Article 5 (2) (b) Decisions on the Protection of Civilian Victims of War of the BD BiH.

271 According to Article 9 of the RS Law on the Protection of Victims of War Torture.

Where the victims suffered sexual violence under special circumstances (committed against a minor, forced impregnation/forced abortion/birth of a child due to forced pregnancy resulting from sexual violence) they are entitled to the amount recognised to civilian victims of war of group II – BAM 320 (about 163 EUR).²⁷² We should here note that victims of conflict-related sexual violence in both entities continue to receive lower disability allowances than demobilised soldiers and they enjoy a smaller scope of rights.²⁷³ Survivors thus do not enjoy the benefits available to military victims of war, such as public transport subsidies, access to medical spa therapy, or scholarships for their children.²⁷⁴

When the rights recognised for survivors of sexual violence are compared with the rights of other civilian victims of war, on the one hand, and military victims, on the other, a conclusion can be drawn about the discouraging implicit messages of power holders on their perception of the harm done to survivors of sexual violence and the necessary level of care and support they deserve in relation to other victims of war.

In the context of the scope of guaranteed rights, in addition to the right to monthly allowance, the legal framework in FBiH stipulates that victims of conflict-related sexual violence have the right to support for treatment costs and procurement of orthopaedic aids, vocational training (occupational rehabilitation, re-skilling and up-skilling), priority employment, priority housing, psychological and legal assistance – all these rights are primarily the responsibility of cantonal authorities, in accordance with the relevant regulations governing these matters.²⁷⁵

Victims of sexual violence are entitled to an allowance for care and assistance of another person only where a minimum of 80% damage to the organism has been established and they are incapable of meeting basic life needs without assistance of another person.²⁷⁶ Therefore, for victims in the FBiH to access this right, they have to apply for a procedure of determining the percentage of disability and recognition of the status of civilian victims of war categories I to IV, thereby losing their status of a special category of civilian victims of war.²⁷⁷

In the RS, rights additional to the monthly allowance include the right to health insurance, the right to exemption from personal costs in health care, the right to medical spa therapy, and incentives for employment and self-employment.²⁷⁸ BD, on the other hand, guarantees the right to an allowance for care and assistance of another person, health care and personal costs in primary and secondary health care services, and the right to reimbursement of funeral expenses.²⁷⁹ It seems that BD provides lower standards of protection compared to both entities, as it fails to provide, for instance, for the right to psychological support to victims²⁸⁰ or the right to assistance in procuring orthopaedic aids, for which a BD survivor in the focus group expressed such a need.²⁸¹

Furthermore, although these laws list the additional rights of survivors, the implementation of certain provisions has proved problematic in practice. For example, the described set of rights envisaged in the Federation of BiH that the cantons are competent for is unevenly implemented in practice, and depends on the financial possibilities and political priorities of individual cantons.²⁸² The stipulated right to vocational training

272 The second group of civilian victims of war had 100% damage to the organism, group IV 80% damage, and group VI 60% damage.

273 Amnesty International 'We need support, not pity' (n 7) 36.

274 Ibid.

275 Article 54 (3) read in conjunction with Article 58 (1) and (4) of the FBiH Law on the Principles of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children.

276 Article 60 of the FBiH Law on the Principles of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children.

277 Telephone conversation of TRIAL International with an employee of the Social Welfare Centre Tuzla, 4 November 2021.

278 Article 7 of the RS Law on the Protection of Victims of War Torture.

279 Article 4 (1) and (2) also provides for a set of supplementary rights which, pursuant to paragraph 5, are exercised in accordance with other relevant regulations. Although the extent to which survivors have effective access to these rights is not clear from these provisions, focus group discussions (see section 7) indicated that, for example, priority housing, which is provided among supplementary rights, is not ensured for survivors, despite their pronounced need for it.

280 This right was envisaged by the earlier Decision on the Protection of Civilian Victims of War from 2008; it was later excluded from the listed rights.

281 See section 7.

282 Saliha Đuderija et al, *Priručnik o načinu ostvarivanja statusa posebne kategorije civilnih žrtava rata u Federaciji Bosne i Hercegovine* [Manual on the method of obtaining the status of a special category of civilian victims of war in the Federation of Bosnia and Herzegovina] (FBiH Ministry of Labour and Social Policy 2019) 25.

and priority employment, for example, *“is stipulated by regulations, however, it is not implemented in practice”*, given that the competent employment services *“failed to implement vocational training or employment of the special category of civilian victims of war”*.²⁸³ The story is similar with priority housing: *“the cantons failed to demonstrate sensitivity to this obligation in their programme priorities.”*²⁸⁴

In the Republika Srpska, it is particularly commendable that the RS Law on the Protection of Victims of War Torture, unlike the Federation of BiH and BD, provides for the right to medical spa therapy for victims²⁸⁵, which many victims and psychological care providers consider an important rehabilitation measure.²⁸⁶ However, according to available information, three years after the entry into force of the Law, the Ministry of Labour, War Veterans and Disabled Persons’ Protection has not yet issued a public call for applications to provide this service.²⁸⁷ Even once it is issued, the question remains whether co-financing will be required from the victims – the survivors already expressed that they cannot accept this option due to their poor financial situation.

Also, the existing legal framework has additional deficiencies and inconsistent criteria that affect effective access to the envisaged measures. The consequence of these deficiencies is that some

categories of victims are excluded from the established support system, such as persons who moved abroad from the Federation or the Brčko District of BiH due to the war²⁸⁸, ex-soldiers who experienced sexual violence and children born of wartime rape²⁸⁹. Other victims are unable to exercise their rights due to various obstacles they face in the process, including, for example, the problem of proving that a crime happened, which is particularly pronounced under the legal framework in the RS.

The RS Law on the Protection of Victims of War Torture contains several deficiencies that represent potential obstacles to accessing rights, including the deadline for applying for the recognition of victim status (5 years from the date of entry into force of the Law – expires in October 2023); the inability of all victims to present the medical documentation that is required to support an application, which must be issued in the period 1990-2006²⁹⁰; the unavailability of other valid documentation to substantiate allegations of sexual violence²⁹¹; and the impossibility of applying without disclosing one’s identity for those persons who have previously been granted identity protection measures in criminal proceedings.²⁹²

In addition to all the above difficulties, the discussions with survivors in the focus groups showed that most of them were not even familiar with their basic rights

283 Ibid 25-26.

284 Ibid 26.

285 Article 7 (4) read in conjunction with Article 12 of the RS Law on the Protection of Victims of War Torture. This service is organised by the RS Ministry of Labour, War Veterans and Disabled Persons’ Protection under a special project approved by the Government of the Republika Srpska.

286 See also section 7.

287 In 2021, the Government of the Republika Srpska approved a medical spa therapy project for veterans with war-related disabilities and family members of soldiers killed in the “defence-patriotic” war and issued a public call thereon. RS Ministry of Labour, War Veterans and Disabled Persons’ Protection, ‘Public Call for Submission of Requests by War Veterans with War-Related Disabilities and Family Members of Veterans Killed in the Defence-Patriotic War of the RS for Treatment in Spa and Climatic Health Institutions’ (2021) <<https://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mpb/Pages/%D0%88%D0%B0%D0%B2%D0%BD%D0%B8-%D0%BF%D0%BE%D0%B7%D0%B8%D0%B2%D0%B8.aspx>> Accessed 20 September 2021.

288 According to Bakira Hasečić, President of Association Women Victims of War, over two thousand members of their association live outside BiH, and therefore cannot exercise the right to compensation. Discussion with relevant stakeholders (Sarajevo, 28 October 2021).

289 See more in sections 14.1.1. and 14.1.2. below.

290 This deadline, in accordance with Article 10 (4) of the RS Law on the Protection of Victims of War Torture, is provided for documentation related to mental impairment, while for physical impairment the time limit is from the beginning of the war until 1997. Many victims, however, did not have access to medical and psychological support at the time and in the area where the crime happened, were unable to access medical records later, or did not turn to anyone for help for fear of stigmatisation.

291 The law, for example in Article 16 (1) and (3), stipulates that the fact that someone has been subjected to torture is proved by a certificate issued by the RS Centre for War Research, War Crimes and Search for Missing Persons, or that this fact can be established by evidence available to other RS bodies, institutions or services. Paragraph 6, on the other hand, stipulates that in the process of determining the status of a victim of torture, the opinion of the RS Association of Camp Detainees and/or the RS Association of Women Victims of War, as well as other associations of civilian victims of war in this entity will be sought. In this way, it seems that these provisions could create an insurmountable obstacle to achieving the status of victims whose cases are not documented by bodies in the RS, but by bodies or associations in the FBiH, BD or at the state level.

292 Decisions on claims are made by the municipal authorities of the victim’s residence. This is an additional problem in such cases, bearing in mind that these are often conservative, small communities, where there is a perceived or real risk of stigmatisation and threats (in most cases, it is in these communities that the crime was committed).

before joining the victims' associations. Most survivors state that the authorities are either insufficiently or not at all working to promote reparations and reintegrate survivors into society. In this way, according to focus group participants, the authorities do not show an interest in them, which leaves them with the only option of turning to associations and non-governmental organisations for help.

The described procedural obstacles and lack of information, together with social barriers that discourage attempts to exercise their rights²⁹³, have led to a devastatingly low number of persons who obtained victim status in BiH and accessed their rights.

In the FBiH, the number of CRSV survivors with recognised victim status was 934 in July 2021.²⁹⁴ In the Brčko District, there were 44 CRSV survivors with that status in October 2021.²⁹⁵ In the Republika Srpska, data from July 2020 indicate that "200 women victims of war exercise their rights under the Law on the Protection of Victims of War Torture (...), of which 121 are entitled to a monthly allowance".²⁹⁶

Even when we take into account that a certain share of the estimated 20,000 victims of sexual violence were killed during the war, and another share died in the post-war period, the total disproportion between these figures remains a huge concern.

*As one survivor from the Brčko District said: "In my town, 44 persons achieved this status, whereas I alone witnessed the rape of 20 women in the war..."*²⁹⁷

14.1.1. THE PROBLEM OF THE UNREGULATED STATUS OF CHILDREN BORN OF WARTIME RAPE

The status and rights of children born of rape in BiH are not regulated, as is the case with civilian victims of war or children of veterans with war-related disabilities. In the past, when they needed them most, there were no support measures for this population. However, although the authorities failed to provide them with assistance earlier, when they needed it most, the authorities still have the opportunity to meet their responsibility.

Even today, now that these children are young adults, there are ways to help them: through support measures for their education, employment or housing, and through elimination of other difficulties that negatively affect their daily lives. There are still opportunities to correct past mistakes. For example, in August 2021, the competent ministry of the Government of Sarajevo Canton issued a public call for young people who have not secured housing to co-finance the purchase of their first apartment, with BAM 3,000,000 allocated for this purpose.

While additional points were envisaged in the applicable scoring system, among others, to family members of fallen soldiers, killed or missing soldiers, demobilised soldiers, decorated veterans, and veterans with war-related disabilities, there was no mention of children born of wartime rape.²⁹⁸ The first and so far the only positive changes that have taken place have been in response to the "Name of one parent" initiative launched by the Association Forgotten Children of War, founded in 2015 by children born of wartime sexual violence.²⁹⁹

293 See more in section 14.3.

294 According to the latest updated information from 31 July 2021. E-mail from Esma Palić, Head of Section in the Department for the Protection and Inclusion of Persons with Disabilities, Civilian Victims of War and the Single Register of the FBiH Ministry of Labour and Social Policy, for TRIAL International (1 September 2021).

295 Information from the answer to the request for access to information of 4 October 2021. E-mail from Senad Bešić, the Head of Service for Veterans' and Disabled Veterans' Protection, for TRIAL International (4 October 2021).

296 'Zakon o zaštiti žrtava ratne torture: U RS po osnovu Zakona pravo ostvaruje 200 žena' [Law on Protection of Victims of War Torture: In the RS, 200 women exercise the right under the Law] Paragraf (2 July 2020) <<https://www.paragraf.ba/dnevne-vijesti/02072020/02072020-vijest1.html>> Accessed 9 August 2021.

297 Discussion with survivors (Tuzla, 26 October 2021).

298 Frustrated because of the ongoing neglect of these children, the president of the Association Forgotten Children of War, Ajna Jusić, posted on her Facebook profile on 3 September 2021 a video of the minister's TV appearance in which the host confronted him with the question of why these children were not included in the scoring system. Ajna wrote: "Our ministers, our politicians still do not know who we are. The video shows why we won't stop fighting. As he says: "Well, it seems we forgot them", as they do every year..."

299 See more in section 16.



Rural, BiH ©Will Baxter

14.1.2. THE PROBLEM OF THE UNREGULATED STATUS OF EX-SOLDIERS AND OTHER PERSONS WHO EXPERIENCED SEXUAL VIOLENCE WHILE WORKING FOR THE MILITARY

The current legal framework in all administrative units in BiH does not provide for the possibility of obtaining victim status and related benefits for persons who survived sexual violence during the war as members of military formations, or as persons who performed other tasks for the army, such as cooking or cleaning – a reason why their status has been linked to members

of the army. Most often, sexual violence against these persons occurred after they were captured by enemy formations, i.e., after they became prisoners of war. Their status is not regulated in the laws pertaining to civilian victims of war, while at the same time the laws and bylaws regulating the rights of veterans and veterans with war-related disabilities do not stipulate sexual violence as a ground for acquiring status, which would be analogous to solutions for civilian victims of war.³⁰⁰

In addition to soldiers who were victims of sexual violence and who contacted TRIAL International for legal aid due to difficulties in recognising their victim status in the FBiH, there are also reported cases in both entities where victims of sexual violence who were cooks or cleaners in the army and are not able to exercise their rights as they are considered members of the military.³⁰¹

14.2. Access to reparations through judicial and quasi-judicial proceedings

In most cases, victims who testified before the ICTY, as well as victims of crimes adjudicated by courts in the respective states of the former Yugoslavia, even so many years after the crimes were committed against them (as well as all other victims of war crimes in BiH) have not managed to obtain compensation, given the numerous obstacles that have emerged in the national legal system, primarily the problematic jurisprudence in BiH.³⁰²

14.2.1. ACCESS TO REPARATIONS THROUGH RECOURSE TO INTERNATIONAL HUMAN RIGHTS BODIES

As mentioned earlier in section 11, there are two decisions of the UN human rights bodies relating to established violations of the rights of victims of conflict-related sexual violence committed by the state of BiH.

300 The need to anticipate this right is indicated by the data from the RS Centre for War Research, War Crimes and Search for Missing Persons that out of 441 applications submitted to them by the competent local services to check whether the applicants are in their database, a high number of 87 who have been denied are soldiers, who cannot exercise the right under the Law on the Protection of Victims of War Torture. Although it is unknown whether any of these soldiers experienced sexual violence, or what their number is, it is evident that any intention of soldiers to get the status of a victim of war torture and exercise the related rights would be denied because of their military status. Foundation Lara Bijeljina, 'Milorad Kojić, direktor Republičkog centra za istraživanje rata, ratnih zločina i traženje nestalih lica Republike Srpske: Čak 75 odsto žrtava torture su žene' [Milorad Kojić, Director of the RS Centre for War Research, War Crimes and Search for Missing Persons: As many as 75% of Torture Victims Are Women] (24 June 2020). <http://www.fondacijalara.com/index.php/aktuelnosti/od-zakona-do-prava/102-milorad-kojic-direktor-republickog-centra-za-istrazivanje-rata-ratnih-zlocina-i-trazenje-destalih-lica-republike-srpske-cak-75-odsto-zrtava-torture-su-zene?fbclid=IwAR0Oncg_Wg-lqV4eLpizsqIpOxfW4W2FrgE8iyVlh5UmBO380bxFfNptPw> Accessed 29 August 2021.

301 E-mail correspondence between Nevena Medić, an IOM employee, and TRIAL International (8 February 2021).

302 Brammertz and Jarvis (n 24) 362-363.

LANDMARK RULING – UN CAT

The decision of August 2019 by UN CAT³⁰³ found a violation of the rights of Mrs. A, the applicant represented by TRIAL International, who had been denied access to compensation, given that the perpetrator who was obliged to compensate the damage in criminal proceedings had no assets or concealed the necessary assets and, at the same time, any lawsuit against the state or the responsible entity would be dismissed due to the application of statute of limitations. The application referred to the failure of the BiH authorities to meet their obligations under the Convention against Torture and to provide the victim of conflict-related sexual violence with an effective and enforceable right to adequate and fair compensation, as well as the fullest possible rehabilitation provided for in Article 14 of the Convention.

UN CAT has ordered BiH to undertake several measures to remedy the situation, including ensuring that Mrs. A receives prompt, fair and adequate compensation, free health and psychological care, and a public official apology. As a general measure, UN CAT required BiH to establish an effective reparations scheme at the national level to provide all forms of legal protection to victims of war crimes, including sexual violence, and to develop and adopt a framework law that clearly defines criteria for victim status and introduces special rights and benefits that will be guaranteed to victims throughout the state. This is the first UN CAT decision on an individual case involving BiH, the first decision on the global level relating to a victim of conflict-related sexual violence, and the first UN CAT decision on an individual communication condemning statutes of limitations in cases of torture-related compensation claims.

LANDMARK RULING – UN CAT

Furthermore, in July 2020, UN CEDAW issued the first decision against BiH³⁰⁴, prompted by an application in a case in which the state of BiH failed to ensure for a survivor of conflict-related sexual violence³⁰⁵ an impartial and effective investigation and to provide access to full reparation for the damage suffered.³⁰⁶

UN CEDAW also demanded a number of individual and general measures from BiH. With respect to reparations, it is important to emphasise the requirement to establish a reparations scheme for the entire state of BiH to provide victims with all kinds of benefits, equal access to social benefits and other support measures to which they are entitled; elimination at the entity level of restrictive and discriminatory provisions from laws and policies concerning conflict-related sexual violence; and the establishment of a fund to provide compensation to victims and other forms of reparations.

Victims' associations, as well as the wider community, both national and international, see UN CAT and UN CEDAW decisions as a significant opportunity to improve the rights of survivors of conflict-related sexual violence in BiH.³⁰⁷ However, neither of these two decisions has yet been implemented.

14.2.2. APPLICATION OF STATUTES OF LIMITATIONS TO COMPENSATION CLAIMS IN CIVIL PROCEEDINGS

Victims of conflict-related sexual violence have very limited opportunities to access reparation measures through court proceedings. At one point, around 2010, the courts in BiH have seen a large influx of non-pecuniary damages lawsuits filed against respective

303 *A v Bosnia and Herzegovina* (n 216).

304 *SH v Bosnia and Herzegovina* (n 216).

305 Also represented by TRIAL International.

306 As with the UN CAT decision, the victim was represented by the NGO TRIAL International.

307 For example, the President of the Association Forgotten Children of War, Ajna Jusić, believes that, knowing what her mother survived, "the decision of the UN Committee against Torture is of great importance for survivors of conflict-related sexual violence, because they have been suffering utmost injustice, discrimination and stigma for over 20 years. (...) Implementation of UN Committee against Torture Decisions can not only help survivors realise their rights in the present, their implementation means a lot to future generations, as a for of guarantee of non-repetition." TRIAL International, 'Seksualno nasilje u Bosni i Hercegovini: historijska odluka pred UN-om – Ajna Jusić' [Sexual violence in Bosnia and Herzegovina: historic decision before the UN – Ajna Jusić] (7 December 2020) <<https://www.youtube.com/watch?v=kvKVp0QceHs&list=PLkdZBEeXXKpTj2Dt-rBPfKfevAXMeWSN&index=2>> Accessed 28 September 2021.

entities and/or the state by persons harmed by war crimes committed in BiH.³⁰⁸ In the absence of a domestic reparations programme that would provide compensation for the damage suffered during the war, these persons decided to exercise their rights through the courts. Compensation proceedings have triggered the application of Article 377 of the Law on Obligations, which provides that when the damage is caused by a criminal offense – for which a longer statute of limitations is provided for criminal prosecution – the compensation claim against the responsible person expires only when the statute of limitations for the criminal prosecution expires. While the courts in the RS have found that compensation claims filed under the principle of strict liability against the entities after 1999, i.e., after 2001³⁰⁹ should be rejected on the ground of statute of limitations³¹⁰, the Supreme Court of the Federation of BiH had an opposing view.³¹¹

The result of such non-harmonised practice was legal uncertainty and inequality of citizens before the law, which varied depending on the court before which the proceedings were initiated.³¹² When the Constitutional Court of BiH (CCBIH) in its 2013 decisions³¹³ sided with

the positions of the Republika Srpska judiciary, thus abandoning its previous opinion³¹⁴, the FBiH courts were also forced to adopt a restrictive approach to the application of statutes of limitations, following the new position of the Constitutional Court.³¹⁵

The rejection of claims by victims of conflict-related sexual violence due to the application of statutes of limitations prevents victims from exercising their right to an effective remedy and contradicts relevant international standards and related obligations of BiH, as established by UN CAT in its 2019 decision.

Victims who have filed lawsuits for compensation of damages have additionally been obliged by some courts to pay the defendant entities' high costs of proceedings amounting to several thousand convertible marks due to the application of the "loser pays" principle. As a consequence, enforcement proceedings are initiated against these citizens, who in most cases are already in a very bad socio-economic situation, often on the verge of poverty, their assets get confiscated, as well as part of their income (if they have any) or they are forced to take out loans. All this is happening to force victims to pay

308 Although the plaintiffs in these proceedings were mostly former camp detainees, a significant number of them were plaintiffs who survived conflict-related sexual violence.

309 In the RS, the courts applied the statute of limitations under Article 376 of the Law on Obligations – a subjective limitation period of 3 years and an objective limitation period of 5 years – with the beginning of the limitation period being 19 June 1996, as the day when the Decision of the National Assembly of the Republika Srpska abolished the state of war and the state of imminent danger of war.

310 According to the RS courts, Article 376 rather than 377 of the Law on Obligations should apply to such claims, arguing that the provisions of Article 377 can only be applied to the perpetrator of a criminal offense as the direct executor who is liable for damages on the basis of guilt, i.e., individual responsibility, provided that a final criminal conviction established the existence of a criminal offense and criminal liability. TRIAL International, 'Odštetni postupci bivših logoraša u Bosni i Hercegovini – prikaz nejednačene sudske prakse, postojećih pravnih dilema i relevantnih međunarodnih standarda' [Compensation proceedings of former camp detainees in Bosnia and Herzegovina – a review of the non-harmonised jurisprudence, existing legal dilemmas and relevant international standards] (2013) 6. However, such a restriction through short statutes of limitations is illogical and places an inadmissible and excessive burden on an individual. It is obvious that the period of 3, i.e., 5 years after the end of the war was too short as few investigations into the committed crimes were launched and even less ended with a criminal judgment. Furthermore, the consequences of the delays in prosecutions of war crimes in BiH, although somewhat understandable because of their number and complexity, cannot be placed as a burden on persons victims of such crimes, given that criminal prosecution in BiH is carried out by competent authorities irrespective of the will of the victim damaged by the criminal offence.

311 The Supreme Court of FBiH has taken a legal position that statute of limitations shall not apply to damages caused by crimes against humanity or crimes under international law for which the criminal code does not stipulate statute of limitations on prosecution or execution of a sentence, the Court referring thereby to an earlier position of the BiH Constitutional Court. The Court found that this did not depend on the fact whether the defendant had been identified, prosecuted, or found guilty. In the explanation, the Court stated, among other things, that "The consequences of the lack of regulations that should be enacted by the legislature, and especially when the law establishes a certain right, cannot be borne by citizens." Conclusion from the session of the Civil Division of the Supreme Court of the Federation of BiH of 24 October 2011 and Decision of the Supreme Court of the Federation of Bosnia and Herzegovina No. 68 0 P 001956 11 Rev of 15 November 2011.

312 TRIAL International and Yale Law School's Lowenstein International Human Rights Clinic, 'Seeking Justice for Wartime Crimes in Bosnia and Herzegovina, General Allegation Regarding the Application of Statutes of Limitations and Court Fees to Victims' <<https://trial.ba/wp-content/uploads/2019/07/General-Allegation-BiH-07-01-2019.pdf>> (2019) 13.

313 The Constitutional Court of BiH did not state that with this decision it changed its legal positions from the 2004 Decision, but it in fact did. See decision no. AP-3111/09 (Constitutional Court of BiH, 23 December 2013).

314 See decision no. AP – 289/03 (BiH Constitutional Court, 19 November 2004). In the case, the court accepted the appeal of S. P. and others against the RS for compensation of non-pecuniary damage in the amount of BAM 5,000.00 after declaring the missing relative of the appellants dead and thus created a legal position on strict liability (in this case of the entity) for compensation for non-pecuniary damage caused by a criminal offense.

315 For a detailed presentation of the issue, see: TRIAL International and Yale Law School's Lowenstein International Human Rights Clinic (n 309).



money to the very entity they sued for compensation for the enormous damage inflicted on them in the war.³¹⁶ Thus, these already vulnerable persons, are re-traumatised, with pronounced consequences for their mental and physical health. One focus group participant shared that when she received a letter obliging her to pay BAM 4,000, she wanted to commit suicide.³¹⁷ Earlier research has found that *"the statute of limitations and court fee crisis have devastated (...) and disillusioned survivors, worsening the already poor economic, psychological, and physical conditions of vulnerable groups (...). The disappointment of not only justice denied but also punishment through material sanctions has deepened survivors' alienation from the legal system more generally."*³¹⁸ This situation is described by the survivors as *"big stress"*, *"yet another traumatic experience to overcome"*, emphasising that

women are *"so disappointed because of this, they don't even want to share what happened to them with others. They don't believe anyone anymore"*.³¹⁹ What devastating and morally unacceptable consequences this practice has on survivors is clearly visible from the perception of one survivor who paid the ordered amount. As she said: *"I served my punishment."*³²⁰

In response to the appeal of a rape victim in war, filed as part of a strategic litigation supported by TRIAL International in the case of a long-time service beneficiary, CCBiH in Judgment No. AP 1101/07 of 22 March 2018 found that the obligation to pay the full amount of costs in this case constituted an excessive burden disproportionate to the legitimate aim pursued, which led to a violation of the appellant's right to property and her right to access to a court.³²¹ As a result

316 For example, the President of Association Suze from Brcko, who helps survivors of conflict-related sexual violence, sought compensation for everything she survived, like many victims of the war, before a court in Banja Luka. However, her lawsuit was dismissed because the statute of limitations applied and she had to pay court costs in the amount of EUR 1,600 instead of receiving compensation. Vedrana Maglajlija, 'Žrtve ratnog silovanja: Strah i nepovjerenje u bh. institucije' [Wartime Rape Victims: Fear and Distrust in BiH Institutions] *Aljazeera* (7 September 2019) <<https://balkans.aljazeera.net/teme/2019/9/7/zrtve-ratnog-silovanja-strah-i-nepovjerenje-u-bh-institucije>> Accessed 4 October 2021.

317 To understand the extent of this shock, it is important to clarify that the amount of BAM 4,000 was then equivalent to the amount of 8 monthly allowances that the victim received based on her status. With the help of TRIAL International, after filing an appeal, that amount was greatly reduced. She withdrew the lawsuit, and the remaining amount of several hundred BAM was paid, upon her request, as social assistance by the municipal service in the town where she lives.

318 Delbyck, 'Compensating Survivors in Criminal Proceedings' (n 85) 39-40.

319 Ibid.

320 She took out a loan and paid the amount of around BAM 3,500 fearing that otherwise it would be further increased over time due to interest rates. Discussion with survivors (Tuzla, BiH, 26 October 2021).

321 Previously, on 6 September 2016, the ECtHR found a violation of these rights in the oft-cited judgment *Cindrić and Bešlić v Croatia* App no. 72152/13 (ECtHR, 6 September 2016). It was an analogous situation in which the applicants were obliged to pay the costs of representing the state in civil proceedings in which they sought compensation in connection with the murder of their parents during the war.

of this attitude, many BiH citizens have been exempted from paying these costs in proceedings before regular courts, either thanks to the skill and commitment of the attorneys who represented them, using CCBIH's views in their submissions, or thanks to the judges' knowledge of CCBIH and ECtHR jurisprudence. The FBiH Attorney's Office and the BiH Attorney General's Office waived their claims for costs of the proceedings following the adoption of this judgment.³²² However, in a significant number of cases, this judgment did not help, most often before the courts in the RS. At the time of writing the Study, in many cases it also seems that the possibilities for protection of their rights in court are almost non-existent due to the fact that their legal representatives did not present the necessary arguments in time or use the necessary legal remedies.

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In paragraph 7.5, the Committee concludes that *"(...) on account of the continuous nature of the effects of torture, statutes of limitations should not be applicable as these deprive victims of the redress, compensation, and rehabilitation due to them"*. In paragraph 7.6, the Committee notes that *"(...) the domestic legislation regulating civil claims for non-pecuniary damage foresees a statute of limitations for such kind of cases (Article 377 of the Law on Civil Obligations), and the Constitutional Court jurisprudence on the matter, interpreting article 377 of the Law on Civil Obligations, fails to acknowledge the principle of subsidiary liability. The Committee is therefore of the view that the State party has failed to fulfil its obligations under article 14 of the Convention by failing to provide the complainant with redress (...)"*.

For some, where the relevant deadlines have not yet passed, the only option at the moment to protect their rights is to address the Constitutional Court of BiH.³²³ A significant number of victims, however, are at a stage where enforcement proceedings to seize their property are already underway, causing not only material damage, but morally and legally unacceptable re-traumatisation 25 years after surviving the horrors of war.

14.2.3. AWARDING COMPENSATION CLAIMS IN CRIMINAL PROCEEDINGS

Due to the practice of applying statutes of limitations and rejecting all claims of victims of war crimes against the state and entities in civil proceedings, the only way victims can currently get a judgment establishing responsibility for the damage they suffered is through judicial proceedings, primarily criminal, against perpetrators of war crimes.³²⁴ We should bear in mind, however, that many survivors will never be able to access compensation in this way as they cannot identify the perpetrators of crimes against them, or because the authorities cannot locate the perpetrators, or because the perpetrators have died.

Starting from 2015³²⁵ and until the finalisation of the Study, prosecutors and courts in BiH have finally started to meet their legal obligations and award compensation to victims of conflict-related sexual violence as part of criminal proceedings, after a long period of complete neglect of compensation claims in criminal proceedings and automatic referral of the injured parties to civil proceedings. The first such judgment is the result of advocacy and strategic litigation by civil society organisations³²⁶ and sets an important precedent not only in BiH, but also in the region.

³²² See also section 16.2.

³²³ In response to this situation, TRIAL International prepared a document for victims' associations and victims' legal representatives with instructions on the arguments to be put forward in such cases. See TRIAL International, 'Parnični postupci za naknadu štete žrtava ratnih zločina koji se vode pred sudovima u Bosni i Hercegovini – Argumenti koji se mogu isticati u podnescima u cilju zaštite njihovih prava' [Civil proceedings for compensation to victims of war crimes before the courts in Bosnia and Herzegovina – Arguments that may be made in applications to protect their rights] (2021) <https://trial.ba/wp-content/uploads/2021/06/01_Parnicni_postupci_Trial_International_Digital.pdf> Accessed 4 October 2021.

³²⁴ Generally speaking, criminal proceedings have some advantages. For example, unlike in criminal proceedings, in civil proceedings survivors do not have the right to identity protection; they get re-traumatised without the assistance of a witness support unit; they have to pay an attorney.

³²⁵ Bosiljko Marković and Ostoja Marković (Judgment) S11 K 012024 17 Krž 2 (Court of BiH, 2 March 2017).

³²⁶ TRIAL International is a non-governmental organisation that has led to a breakthrough in this practice and is continuously working to create conditions for its implementation and improvement. In addition, the Association Women Victims of War in Sarajevo, in the years leading up to the first such judgment, kept stressing the need to ensure access to free legal aid and compensation for victims of conflict-related sexual violence as part of criminal proceedings.

Until this judgment, no victims of conflict-related sexual violence or of war crimes in general in BiH had ever been awarded compensation in criminal proceedings, despite the existing obligations of prosecutors and courts, and the corresponding rights granted to victims in criminal procedure legislation.³²⁷ Given that numerous survivors of sexual violence testify under identity protection measures, the failure to decide on their compensation claim in criminal proceedings and their referral to civil proceedings has been discouraging victims from further seeking compensation due to the lack of special rules that would allow them to continue to benefit from identity protection.

In the period from June 2015 until today, in a total of 16 cases in BiH, judgments were passed that, in addition to determining criminal responsibility and imposing an appropriate sanction, obliged the perpetrators to pay compensations ranging from BAM 15,000 to BAM 60,000.³²⁸ These judgments have imposed the obligation on a total of 22 perpetrators to compensate 18 victims of sexual violence. This practice has been especially established before the Court of BiH, with two other positive examples before lower instances, namely the District Court in Doboj and the Cantonal Court in Novi Travnik.

The practice of awarding compensation as part of criminal proceedings has proved important for victims of conflict-related sexual violence. Survivors who had this experience felt that they were at the centre of the process; their role transformed from the perceived role of mere passive evidence into a role of active seekers of their rights. Survivors feel the increased attention of all parties involved, from the prosecutor to providers of psychological support and legal aid, and they feel important satisfaction for being recognised by the court, as a symbolic representative of society, of the various forms of damage they suffered, and for the responsible person to compensate that damage.³²⁹

Although this is a positive outcome of the work of the judiciary, it is necessary to indicate several problems that must be addressed in relation to this practice, both on the part of prosecutors and courts, and potential providers of free legal aid and power holders. For example, although the Prosecutor's Office of BiH and the Court of BiH have developed extensive jurisprudence on this issue and victims of sexual violence are able in most cases to exercise their right to compensation, there have been several cases in which the prosecutors manifested passivity.

There are still cases in which they fail to timely inform the injured parties about this right, gather evidence necessary to determine the damage, or conduct timely investigations of the suspect's/defendant's financial situation to facilitate later payment of the awarded amount.³³⁰

Following the adoption of the revised War Crimes Prosecution Strategy in September 2020, this problem may become particularly pronounced before the entity-level judiciary. Namely, many cases of conflict-related sexual violence were transferred, following the instructions in this document, to cantonal and district prosecutor's offices and courts. There is a great challenge to ensure that prosecutors in all these institutions facilitate the adjudication of compensation claims by taking the necessary actions, as well as that the courts pay due attention to this segment of criminal proceedings.

In the past, there were instances of resistance to this practice for no particular reason. For example, in one strategic case in Banja Luka in 2017, the Banja Luka District Court failed to demonstrate readiness to award damages, despite the fact that the injured party was represented by an attorney who expertly prepared the motion, and that the Banja Luka District Prosecutor's Office met all the requirements, including obtaining relevant expert witness evidence and

327 This inertia was the result of a number of factors, including challenges in dealing with war crimes, fears that such claims would further burden the already overcrowded offices, and lack of experience in presenting necessary evidence (on the prosecutor's side) and awarding damages (on the side of the court).

For more information on problems in awarding compensation in criminal proceedings, see TRIAL International BiH, 'Enforcement of Damage Compensation Claims of Victims of War Crimes in Criminal Proceedings in Bosnia and Herzegovina – Situation, Challenges and Perspectives' (2015).

328 After the first judgment, there were judgments in cases Slavko Savić, Krsto Dostić, Adil Vojić and Bekir Mešić, Mato Baotić, Nenad Vasić, Anto Jozić and Đemahudin Mahalbašić, Momir Tasić and Petar Tasić, Dragan Janjić, Vuk Ratković, Milan Todović, Goran Mrđa et al, Milomir Davidović, Saša Cvetković, Samir Kešmer and Mirsad Menzilović, Radovan Paprica and Slavko Ognjenović.

329 For more information, see Delbyck, 'Compensating Survivors in Criminal Proceedings' (n 85).

330 More recent examples are cases before the Court of BiH such as Saša Čurčić (Judgment) S11 K 028283 19 Krl (Court of BiH, 14 September 2020); Milisav Ikončić (Judgment) S11 K 018442 15 Krl (Court of BiH, 14 September 2018).

testimony.³³¹ An additional problem will be the fact that, due to the fragmented legal aid system in BiH, at the entity level, with the exception of some cantons³³², victims do not have access to governmental free legal aid in criminal proceedings.³³³

At the state level, before the Court of BiH, after having these services provided by non-governmental organisations and lawyers, this problem has been addressed by the enactment of the 2016 Law on Free Legal Aid. The Law established the Free Legal Aid Office within the BiH Ministry of Justice, which represented the injured parties before the state Court in one third of the total number of criminal cases in which compensations were awarded (including cases initiated before the adoption of this Law).

However, as a result of the persistent problem of turnover of staff in charge of providing legal aid to survivors and the related challenge of knowledge transfer and lack of uniform standards of service provision, several problems were noted in 2021. In so far two known cases of representing survivors in criminal proceedings, there was a failure of the Office to ensure continuous representation in enforcement proceedings, which at this time are not yet initiated.³³⁴

Furthermore, the Office failed to provide timely legal aid to war crimes victims in three cases duly assigned to them by the Witness Support Section of the BiH Court, which resulted in at least one case irretrievably losing the opportunity to pursue a compensation claim, as the first instance judgment has already been issued in the meantime.³³⁵

Finally, the full potential of the compensation award practice will only be realised once each victim effectively receives the awarded amounts of damages. Of these 16 cases, three cases led to successful collection through



enforcement proceedings, and two other cases led to some form of voluntary payment by the perpetrator, after they were ordered by a final judgment to compensate the survivor. In the remaining 11 cases, however, a great challenge remains to ensure enforcement; in some it is already clear that this will not be possible due to the fact that the perpetrator, according to officially available data, does not have any assets.

This sometimes occurs due to poverty and sometimes due to the concealment of assets the moment perpetrators become aware of the fact that it could be taken away from them. At the same time, contrary to international standards³³⁶, there is no mechanism by which the state or the responsible entity could in such situation ensure payment of compensation to the victim, based on the principle of subsidiary liability, with possible subsequent reimbursement from the perpetrator.

331 Smiljanić et al (Judgment) 11 O K 017578 16 K (District Court in Banja Luka 2016); Smiljanić et al (Judgment) 11 O K 017578 17 Kž (Supreme Court of the Republika Srpska 2017).

332 Such as Zenica-Doboj Canton.

333 Information obtained through the analysis of the legal framework and written communication with the bodies in charge of providing free legal aid in the Federation of BiH to the Republika Srpska during 2017.

334 Information obtained at a meeting with an employee of the Legal Aid Office at the BiH Ministry of Justice, Ilma Mehić-Jusufbašić, held on 9 November 2021.

335 Information confirmed by the Head of the Witness Support Section at the Court of BiH, Alma Taso-Deljковиć, at a meeting held on 25 October 2021.

336 A range of legal instruments provide guidance in this regard, including the European Convention on the Compensation of Victims of Violent Crimes and the UN Convention against Torture, under which the UN CAT, as described above, found a violation of rights in BiH. See also TRIAL International, 'Effective Enforcement of Compensation for Victims of War Crimes within the Criminal Procedure in Bosnia and Herzegovina' (2017).

14.3. Societal challenges and obstacles faced in accessing remedies

In addition to the numerous procedural difficulties described above that arise when survivors of conflict-related sexual violence attempt to access reparations, survivors also face various societal obstacles. They primarily relate to the widespread stigmatisation in BiH society, communities' lack of understanding of survivors of trauma, the frequent lack of empathy and support for survivors and their current situation, survivors' sense of shame and fear of their environment learning about their trauma, and family and social circumstances due to which their trauma is shrouded in a veil of secrecy.³³⁷ Sensitivity of officials when survivors apply for status, which is not harmonised in the territory of BiH, also plays an important role.³³⁸

One of the important challenges in this context is to ensure appropriate treatment of victims and ensuring confidentiality of victim status' data. While in the Federation of BiH, for example, the data protection system has been perfected, with a number of specific protocols and rules³³⁹, interviews with survivors have indicated that in BD, officials openly share survivors' names in meetings with external stakeholders.³⁴⁰ There are guidelines that could address these issues. The FBiH Ministry of Labour and Social Policy has issued a useful Handbook, which includes, *inter alia*, guidelines for conducting interviews, guidelines to sensitise stakeholders involved, confidentiality rules and similar matters. It represents a good basis for the training and sensitising of all bodies working with victims.³⁴¹

Without additional efforts to strengthen the capacity, sensitise and raise awareness among professionals and the general public about the specific situation

of survivors, all these factors will continue to prevent transparent discussions on conflict-related sexual violence and negatively affect the empowerment of survivors to demand and access reparations. A comparison of the estimated number of victims of sexual violence and the number of those identified as victims through judicial or extrajudicial proceedings, which are set out in section 13.1, is one of the indicators of the scale of this problem.

In the context of assistance made available to wartime rape survivors so far, we should note the fact that support was originally provided through the work of civil society organisations and the activities of certain international organisations.³⁴² In the absence of an adequate state reaction to the catastrophic consequences of the war, organisations such as Medica Zenica, Viva žene Tuzla and Snaga Žene were established already during the war in BiH in response to the suffering of persecuted people and survivors of sexual violence and they began providing much-needed psychological support, acting as safe houses for survivors when needed.

These organisations continued their work by providing legal aid, as well as assistance through socio-economic empowerment.³⁴³ Even today, after certain forms of general assistance to victims of conflict-related sexual violence have been established, continuous psychological support, as well as work with survivors in the process of improving their rights, are still largely provided by civil society organisations, victims' associations and NGOs.³⁴⁴

As for targeted programmes of economic empowerment of survivors, for a couple of years a special role was played by UN Women in BiH, that led the activities of financing small businesses

337 For more information, see, for example, UNFPA, 'Stigma against Survivors of Conflict-Related Sexual Violence in Bosnia and Herzegovina' (2015) 4, 7.

338 See also section 7.

339 Information obtained at a meeting with Saliha Đuderija, Assistant Minister with the BiH Ministry of Human Rights and Refugees, held on 2 November 2021.

340 Discussion with survivors (Tuzla, 26 October 2021).

341 Saliha Đuderija et al, *Priručnik o načinu ostvarivanja statusa posebne kategorije civilnih žrtava rata u Federaciji Bosne i Hercegovine* [Manual on the method of obtaining the status of a special category of civilian victims of war in the Federation of Bosnia and Herzegovina] (FBiH Ministry of Labour and Social Policy 2019).

342 OSCE, 'Well-being and Safety of Women' (2019) 17.

343 For more information about these organisations, visit the official website of the Association Medica Zenica <https://medicazenica.org/o-medici-2/> and Association Vive žene – Therapy and Rehabilitation Centre <https://vivezene.ba/o-nama/>

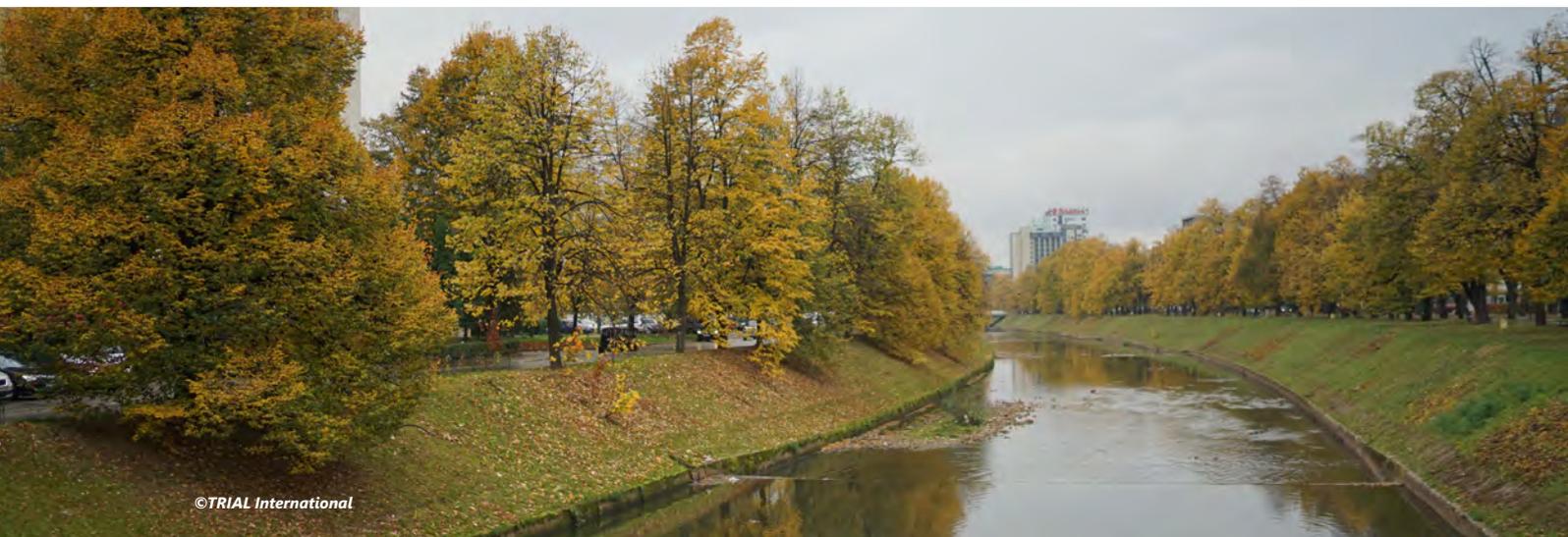
344 Interview with Dr. Amra Delić, neuropsychiatrist (Zoom, 8 June 2021).

of victims' associations.³⁴⁵ In addition to these organisations, significant support in other fields such as legal counselling and legal aid, and advocacy to address the problems of this population are provided by non-governmental organisations such as TRIAL International, Vaša prava and the Foundation of Local Democracy.³⁴⁶

In terms of support by the authorities in BiH in the form of economic incentives, there are some isolated examples of assistance to victims and victims' associations operating in BiH. For example, the Mayor of Municipality Centar Sarajevo and the Association of War Victims Foča 92-95 reached an agreement in February 2021 on the basis of which the association received a donation of industrial sewing machines.³⁴⁷ Aside from financial assistance, he promised the association that help will be provided in placing their products on the market.³⁴⁸ However, this is mainly short-term support in response to individual initiatives, not an organised or systemic

solution that would continuously provide opportunities for victims throughout BiH. There are also programmes such as the Financial Mechanism for the Implementation of the Gender Action Plan of BiH (FIGAP) to which associations of victims of sexual violence can apply to get funding for their projects³⁴⁹.

The number of such programmes, however, remains unsatisfactory, and full institutionalisation of victims' economic empowerment programmes is needed. Despite the time that has passed, survivors still have needs that must be further supported by civil society organisations and international organisations as the state fails to address them adequately and fully – such as opportunities for economic empowerment, support to set up small businesses and other activities, more intensive psychological support and legal aid – as well as emerging needs, such as access to medical spa therapy, that these organisations could potentially start supporting in the future.



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345 These activities were carried out under the Joint Program of UN agencies to address the unresolved legacy of conflict related sexual violence (CRSV) in Bosnia and Herzegovina entitled "Seeking Care, Support and Justice for Survivors of Conflict-Related Sexual Violence in BiH". 'UN 2015-2020 Program for Bosnia and Herzegovina'. The programme also includes a component of economic empowerment and employment of victims of conflict-related sexual violence.

346 For more information, visit the websites of TRIAL International <https://trial.ba/> and <https://trialinternational.org/>, Vaša prava <https://pravnapomoc.app/ba> and the Foundation of Local Democracy <https://fld.ba/>

347 Official website of Municipality Centar Sarajevo, 'Načelnik Mandić ugostio predstavnice Udruženja žrtava rata Foča 92-95' [Mayor Mandić hosted representatives of the Association of War Victims Foča 92-95] <<http://www.centar.ba/novost/16992/nacelnik-mandic-ugostio-predstavnice-udruzenja-zrtava-rata-foca-92-95>> Accessed 8 September 2021.

348 Ibid.

349 Agency for Gender Equality of Bosnia and Herzegovina, 'Šesti periodični izvještaj Bosne i Hercegovine o provedbi Konvencije o eliminaciji svih oblika diskriminacije žena' [Sixth Periodic Report of Bosnia and Herzegovina on the Implementation of the Convention on the Elimination of All Forms of Discrimination against Women] (2013-2016)' (2017) 36, X-XIII.

14.4. Access to various forms of assistance to date

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.



VII. ANALYSIS OF OPPORTUNITIES AND THREATS FOR REPARATIONS

| 15. Mapping of key stakeholders

The relevant stakeholders involved in the process of ensuring reparations for survivors of conflict-related sexual violence are both state bodies at various levels of government and judicial institutions, as well as non-governmental organisations and victims' associations.

As for legislation in FBiH, the FBiH Ministry of Labour and Social Policy plays a key role in the oversight over the implementation of laws and the functioning of the commission responsible for recognising the status of victims of sexual violence, as a starting point for survivors to exercise their right to reparations. Similarly, in the RS, the RS Ministry of Labour, War Veterans and Disabled Persons' Protection plays a key role in the regulation and implementation of the system for recognising the status of a victim of war torture. At the state level, the BiH MHRR plays an important role in monitoring and implementing international and other documents and decisions in the field of human rights and fundamental freedoms, and reporting to national and international bodies on the state of human rights.

This Ministry is also responsible for coordinating efforts to adopt state-level strategic documents that could potentially improve the situation of survivors. The Ministry established the Agency for Gender Equality of BiH as an institutional mechanism for gender equality competent for drafting strategic documents such as the Action Plan for the Implementation of UN Security Council Resolution 1325.

Regarding access to compensation through court proceedings, cases are handled and decisions made by prosecutors and judges of district and cantonal courts, as well as the supreme courts of the entities under their appellate jurisdiction, the Prosecutor's Office of BiH and the war crimes unit of the Court of BiH.³⁵⁰ To date, both national courts and the ICTY have played an important role in documenting conflict-related sexual violence. Court proceedings were most often initiated thanks to victims' associations and non-governmental organisations that provided various forms of support, including legal aid to survivors.

Victims' associations have provided important support for victims' empowerment and assistance in accessing justice and reparations. When the war ended, the first war victims' associations were established, including associations of victims of conflict-related sexual violence. Many associations are still very active in providing support to survivors during court proceedings, the process of obtaining victim status, and helping members receive the necessary psychological support. They include the Association of Women Victims of War,

Association of Victims of War Foča 1992-1995, Association Naš glas, Association of Women Victims of War of the Republika Srpska, Association of Prijedor Women Izvor, Association Suze, etc. In addition to victims' associations, NGOs and international organisations have also played an important role in providing support measures, or facilitating access to reparations, as well as advocating for the improvement of the reparations system.³⁵¹

³⁵⁰ See section 14.2.3.

³⁵¹ For more, see sections 14.4. and 16.



16. Reparations advocacy initiatives and opportunities for reparations

In the past few years, as mentioned above, numerous initiatives and activities of NGOs and international organisations as well as victims' associations have led to some progress such as the adoption and changes of laws and case law, but also overall progress in socio-economic empowerment and social sensitivity for victims of conflict-related sexual violence.³⁵²

In addition to TRIAL International Office in BiH, which is particularly active in facilitating access to justice and reparations for survivors of conflict-related sexual violence through a wide range of advocacy methods to change and improve legal frameworks and jurisprudence, Vive žene, Medica Zenica, Foundation of Local Democracy and some victims' associations have also played and still play a special role in wider advocacy processes. Significant efforts on advancing access to reparations were also invested by international organisations such as Amnesty International, IOM, OSCE, UNHCR, UNFPA, UNDP, and UN Women.

These organisations produced reports that included interviews with survivors, addressing various aspects of transitional justice and reparations, and presenting recommendations for improving access to reparations. Their findings were also used in the preparation of this report. In 2009 and 2017, Amnesty International published reports that provided overviews of the then situation in Bosnia and Herzegovina regarding reparations for victims of conflict-related sexual violence.³⁵³ UNFPA produced a report on stigma against survivors of conflict-related sexual violence³⁵⁴, while Medica Zenica and Medica Mondiale published a research on the consequences of war rape and sexual violence on the lives, health and relations of survivors.³⁵⁵

In 2013, IOM released a publication aimed at initiating talks and political decisions on reparations for victims of international crimes.³⁵⁶ Furthermore, although they did not include statements and perceptions of survivors, there are a number of other reports that have significantly contributed to the development of more favourable circumstances for exercising the

352 See section 14.4.

353 Amnesty International, 'We need support, not pity' (n 7); Amnesty International, 'Whose Justice?' (n 36).

354 UNFPA, 'Stigma against Survivors of Conflict-Related Sexual Violence in Bosnia and Herzegovina' (2016).

355 Medica Zenica and medica mondiale (n 64).

356 International Organization for Migration, 'Reparations for Wartime Victims in the Former Yugoslavia: In Search of the Way Forward' (2013).

rights of survivors of conflict-related sexual violence.³⁵⁷ In addition to producing studies with a focus on specific aspects of access to reparations³⁵⁸, TRIAL International has also been active in gathering victims' associations and non-governmental organisations with the aim of submitting shadow reports to international organisations such as the European Commission and United Nations human rights mechanisms.³⁵⁹

16.1. Initiatives and opportunities to improve the legal framework and associated policies on administrative reparations

With regard to the legal framework regarding victim status and related rights in the BiH entities, the report has previously pointed out the critical role of civil society organisations and victims' associations in successful advocacy for the adoption and improvement of relevant regulations.³⁶⁰ In response to reports submitted by NGOs and victims' associations before UN human rights mechanisms, since 2004 the UN bodies have reiterated in their recommendations to Bosnia and Herzegovina the need to ensure equal access to all forms of reparations for victims in BiH, including through the establishment of an effective state-level reparations scheme.³⁶¹

Several attempts to adopt significant strategic documents that would improve the status of civilian victims of war in a uniform manner and in line with international standards have failed.³⁶² The most important among them were the draft state-level Transitional Justice Strategy and the Programme for Victims of Conflict-Related Sexual Violence, prepared

in 2012, as well as the Draft Law on the Protection of Victims of Torture in BiH.³⁶³ All documents had been developed in consultations with civil society.

While the draft state-level Transitional Justice Strategy was prepared by BiH MHRR, the draft Programme for Victims of Conflict-Related Sexual Violence was initiated by BiH MHRR and UNFPA. The draft BiH Law on the Protection of Victims of Torture, which was to regulate the status of victims of torture in the entire territory, was prepared by BiH MHRR, and its adoption in 2013 was actively advocated by Vive žene in cooperation with several associations of camp detainees in BiH through the initiative "*United against Torture in BiH – the Network*"³⁶⁴.

In the Federation of BiH, the need for the adoption of a special Law on the Protection of Civilian Victims of War has been emphasised for a long time. This need became particularly pronounced when the Republika Srpska adopted a law regulating the status of victims of torture and when it became clear that continuous attempts to adopt such a law at the state level had no chance of success.

In early 2019, the Government of the Federation of BiH accepted the initiative of the Assembly of Zenica-Doboj Canton to adopt a special law on civilian victims of war at FBiH level, which would address separately the protection of civilian victims of war from the existing Law on the Principles of Social Protection, Protection of Civilian Victims and Protection of Families with Children and address some of the noted deficiencies of the existing legal framework in the Federation of BiH.³⁶⁵

357 In this regard, see for instance: OSCE, 'Combating Impunity for Conflict-Related Sexual Violence in Bosnia and Herzegovina: Progress and Challenges. An analysis of criminal proceedings before the courts of the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District BiH between 2004 and 2014' (2015); OSCE, 'Towards Justice for Survivors of Conflict-Related Sexual Violence in Bosnia and Herzegovina: Progress before Courts in BiH 2014–2016' (2017); Sarajevski Otvoreni Centar, 'Orange Report, Report on the State of Human Rights of Women in Bosnia and Herzegovina in 2020' (2021).

358 For the report for which the survivors, among others, were interviewed, see: Delbyck, 'Compensating Survivors in Criminal Proceedings' (n 85). All other reports are available at: https://trial.ba/?page_id=129

359 For a list of reports sent to these bodies in the past by TRIAL International in coalition with a number of victims' associations and other non-governmental organisations, see: <https://trial.ba/?cat=6>

360 See, for example, section 13.2.

361 See, for example, UNCAT, 'Concluding observations on the sixth periodic report of Bosnia and Herzegovina' (22 December 2017) CAT/C/BIH/CO/6 para 19.

362 See also section 13.2.1.

363 For more details on the documents, see Amnesty International, 'We need support, not pity' (n 7) 29 – 33; The draft Transitional justice strategy can be accessed at: Ministry of Human Rights and Refugees, 'Transitional justice strategy for Bosnia and Herzegovina' (March 2013) http://www.nuhanovicfoundation.org/user/file/2013_transitional_justice_strategy_bih_-_new.pdf Accessed 9 February 2022.

364 See, for example, Radio Sarajevo, 'Zajedno protiv torture u BiH' [United against torture in BiH] *Radio Sarajevo* (16 March 2013) <<https://radiosarajevo.ba/vijesti/bosna-i-hercegovina/zajedno-protiv-torture-u-bih/106291>> Accessed 7 September 2021.

365 Explanatory statement to the Draft Law on Civilian Victims of War of the Federation of BiH, internal archives of TRIAL International.

The FBiH Ministry of Labour and Social Policy drafted subsequently the Law on Civilian Victims of War and submitted it, *inter alia*, to the BiH Association of Camp Detainees, which subsequently drafted another version of the law, insisting on recognition of the status of war victims for former camp detainees (including members of the military who survived conflict-related sexual violence), as well as a broader catalogue of rights for this population, including certain rehabilitation services.³⁶⁶

After a meeting with the BiH Association of Camp Detainees, one MP sent an initiative to the Parliamentary Assembly of BiH asking the Government of FBiH to prepare and submit this law to the parliamentary procedure of the Federation Parliament.³⁶⁷ We should underline that the draft law prepared by the relevant FBiH Ministry recognised for the first time the status of a new category – “*children born of wartime rape*”.

Although the option of allowances was not envisaged for them, the recognition of their status would enable the exercise of other rights, such as occupational re-skilling or up-skilling, priority employment, priority housing, and psychological and legal assistance. The explanatory statement to the draft law sees this as a major step forward, noting that “*the very recognition of the status of civilian victims of war opens further opportunities for this group to exit the zone of ‘invisibility’ and non-recognition in all aspects of society in FBiH*”.

In March 2020, a working group was appointed in the Brčko District of BiH to assess the impact of regulations and prepare a draft Law on the Protection of Civilian Victims of War of the Brčko District of BiH, which is in the drafting phase and was expected to be adopted by the end of 2021.³⁶⁸ The OSCE Mission to BiH is involved in both processes of preparation of laws, providing the necessary professional and technical support.³⁶⁹

In Republika Srpska, on the other hand, there are still no indications of willingness to evaluate the implementation of the 2018 Law on the Protection of Victims of War Torture and to revise the solutions accordingly, for the purpose of harmonising them with solutions in FBiH and BD, and of improving implementation and protection of rights – despite reports (both international and national) indicating a need in that respect.³⁷⁰

16.2. Initiatives and opportunities to improve access to reparations through court proceedings

In the context of access to reparations through civil proceedings, and in light of the inability to protect the identity of victims protected witnesses whose compensation claims get referred to civil proceedings³⁷¹, the first step in resolving the problem was taken in 2021.

Namely, in response to the initiative by and with the active participation of TRIAL International, after several years of efforts, amendments to the Civil Procedure Code before the Court of BiH were drafted and adopted – according to which witnesses who testify under protection measures in criminal proceedings are provided with continuous identity protection during the subsequent civil proceedings for compensation.³⁷²

For this solution to be fully meaningful for both victims of war crimes and all other victims of criminal offences who find themselves in this situation, this example should be followed by the entity level and BD, whose representatives participated in the working group of the BiH Ministry of Justice which drafted the amendments.

366 Jasmin Begić, ‘Prava civilnih žrtava rata u Federaciji : Prioritetno usvajanje zakona’ [Rights of Civilian Victims of War in the Federation: Priority Adoption of the Law] *Detektor* (3 September 2021) <<https://detektor.ba/2021/09/03/prava-civilnih-zrtava-rata-u-federaciji-prioritetno-uvajanje-zakona/>> Accessed 4 September 2021.

367 Ibid.

368 Letter submitted by the Service for Veterans’ Disability Protection and Civilian Victims of War of the Brčko District of BiH to TRIAL International (4 October 2021).

369 E-mail correspondence between Inela Hadžimešić, an employee of the OSCE Mission to BiH, and TRIAL International (19 October 2021).

370 European Commission, ‘Bosnia and Herzegovina Report 2020’ (General Publications) COM (2020) 660 final 26; Initiative for Monitoring the EU Integration of BiH, ‘2019-2020 Alternative Report on the Application of Bosnia and Herzegovina for the European Union Membership: Political Criteria’ (2021) 48.

371 This problem was presented in section 14.2.3.

372 Law on Amendments to the Civil Procedure Code of BiH (Official Gazette of BiH, 34/2021).

As has been described in section 14.2.2, one of the challenges faced by survivors is the application of statute of limitations leading to the dismissal of compensation claims in civil proceedings and the fact that survivors are then obliged to pay the costs of the proceedings to the entities, applying the “loser pays” rule.

Numerous attempts have been exhausted in the past to address this problem. The associations of camp detainees continuously pointed this problem out to the representatives of the authorities and the public, appealing to them to solve it and help the people who found themselves in this unfair situation.³⁷³

The non-governmental organisation TRIAL International conducted educations and published analyses of the legal arguments to be used in such cases for professionals, victims’ associations and their representatives³⁷⁴; in late 2017, they brought together 40 organisations and associations of victims to send a joint letter to all relevant institutions in BiH asking them to address and solve the problem of costs collection³⁷⁵; together with an attorney, they conducted strategic litigation for the protection of human rights before the Constitutional Court of BiH initiated by an appeal of a victim of conflict-related sexual violence³⁷⁶; and in 2018, with an attorney, they initiated a request for an abstract assessment

of the constitutionality of the relevant provisions of entity civil procedure codes by 12 MPs of the House of Representatives of the Parliamentary Assembly of BiH³⁷⁷.

In September 2020, the BiH Parliamentary Assembly adopted an initiative, originally initiated by TRIAL International through individual MPs, that addresses the issue of paying the costs to the attorney generals’ offices by citizens, including survivors who claimed their right to compensation of war crimes damages in civil proceedings.³⁷⁸

The adoption of the initiative suggests that the competent state and entity institutions, and BD institutions should prepare amendments to the Civil Procedure Code to include a provision providing for an exemption to pay the costs of proceedings in such situations, including the public attorneys’ legal fees; and they should align the amendments with the decision of the European Court of Human Rights.³⁷⁹

373 See, for example ‘Salkić u Banjoj Luci sa predstavnicima Saveza logoraša BiH i Merhameta’ [Salkić in Banja Luka with representatives of the BiH Association of Camp Detainees and Merhamet] *Faktor* (16 March 2021) <<https://faktor.ba/vijest/salkic-u-banjoj-luci-sa-predstavnicima-saveza-logorasa-bih-i-merhameta-118419>> Accessed 20 October 2021.

374 See, for example, TRIAL International, ‘Odštetni postupci bivših logoraša u Bosni i Hercegovini – prikaz neujednačene sudske prakse, postojećih pravnih dilema i relevantnih međunarodnih standarda’ [Compensation proceedings of former camp detainees in Bosnia and Herzegovina – an overview of unharmonised jurisprudence, existing legal dilemmas and relevant international standards] (2013); TRIAL International, ‘Parnični postupci za naknadu štete žrtava ratnih zločina koji se vode pred sudovima u Bosni i Hercegovini’ [Civil proceedings for compensation of damages to war crimes victims before the courts in Bosnia and Herzegovina] (2021); TRIAL International, ‘Novi stavovi Evropskog suda za ljudska prava kao putokaz za rješavanje pitanja naplate sudskih troškova od žrtava ratnih zločina u Bosni i Hercegovini’ [New positions of the European Court of Human Rights as a guide for resolving the collection of court costs from victims of war crimes in Bosnia and Herzegovina] (2016).

375 Responses were received only from the BiH Ministry of Justice, the RS Ministry of Justice, and the BD Judicial Commission, all of which either declared themselves non-competent or refused to address the problem.

376 Decision no AP 1101/17 (BiH Constitutional Court, 22 March 2018). See: TRIAL International, ‘Važna presuda Ustavnog suda BiH’ [An important judgment by the Constitutional Court of BiH] (2018) <<https://trial.ba/wp-content/uploads/2018/04/Saopštenje-odluka-Ustavnog-suda-TRIAL-2018.pdf>> Accessed 8 November 2021. For more information on the scope of this judgment, see section 14.2.2.

377 TRIAL International, ‘Odluka Ustavnog suda: Javnim pravobranilaštvima se i dalje priznaju jednaki troškovi kao i advokatima’ [Constitutional Court Decision: Public Attorney’s Offices continue to be granted the same costs as lawyers] (2019) <<https://trial.ba/wp-content/uploads/2021/10/Saopštenje-Odluka-Ustavnog-suda-BiH-javnim-pravobranilastvima-se-i-dalje-priznaju.pdf>> Accessed 8 November 2021.

378 TRIAL International, ‘Parlament BiH usvojio inicijativu koja adresira problem plaćanja visokih troškova zastupanja javnih pravobranilaca u postupcima naknade štete preživjelih ratnih zločina’ [BiH Parliament adopts initiative addressing high costs for representation by public attorneys in war crimes survivors’ proceedings] (2020) <<https://trial.ba/wp-content/uploads/2021/04/Saopštenje-za-javnost-TRIAL-International-.docx-3.pdf>> Accessed 20 October 2021.

379 *Cindrić and Bešlić v. Croatia* App no 72152/13 (ECHR, 30 January 2017).

Building upon this initiative, in 2021, TRIAL International prepared, with a leading expert in civil procedure law, the text of the Proposal of Amendments to the CPC which addresses the problem of imposing excessive financial burdens on claimants when they lose claims against entities and they presented it to MP's of the FBiH Parliament with the aim of getting support and submitting it for further consideration.³⁸⁰ Although we assume that in most cases of war crimes victims this initiative will not solve the problem, as the legislative process takes a long time which means that even if the proposals were to be adopted, their cases would most likely already be in the enforcement phase; however, this would at least facilitate access to justice for the vulnerable population categories in the future.

In a situation in which multiple possibilities to address the problem have been exhausted, with limited success that did not lead to solving the problem in its entirety, the most effective approach currently seems to seek the issuance of recommendations by international bodies to the BiH authorities followed by advocacy for their implementation.

In this regard, it is of great importance that the European Commission, in its 2021 BiH progress report, stated that *"entity governments should consider waiving court fees for victims of wartime torture to which statutes of limitations were applied in the past."*³⁸¹ In response to the request for information on the practice of the FBiH Attorney's Office and the Office of Attorney General of BiH on this issue, TRIAL International received the explanation that due to the position taken in March 2018 by the Constitutional Court of BiH³⁸² there are no enforcement cases in these institutions that include war crime survivors.³⁸³ This means that this problem still persists only in relation to the Republika Srpska entity. In the coming period, it is necessary to continue engaging in dialogue and advocacy activities aimed at the prompt

fulfilment of the recommendations of the European Commission, bearing in mind the urgency of this matter for a growing number of victims.

In June 2019, TRIAL International, together with the Yale Law School Lowenstein International Human Rights Clinic, submitted a General Allegation³⁸⁴ to the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, the Working Group on Enforced or Involuntary Disappearances, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, and the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, asking them to condemn this negative practice and to issue recommendations to BiH for it to be abandoned.³⁸⁵

In February 2020, these UN special procedures sent a public communication to Bosnia and Herzegovina asking for more information related to cases where courts fees were imposed to wartime victims and cases where seizure of assets or property were ordered, what measures have been undertaken to address this problem, and requesting that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence. At the time of writing, BiH has yet to respond to this communication or to undertake the required measures.

At the end of his official visit to BiH in December 2021, the UN Special Rapporteur on the Promotion of Truth, Justice, Reparations and Guarantees of Non-Repetition expressed in his Preliminary Observations and Recommendations "(...) serious concern about the alarming number of cases in which victims have been forced to pay high court fees related to civil proceedings for compensation which they lost, as a result of the unjust procedures established for the claim of benefits and the concomitant application of statutes of limitations." The UN Special Rapporteur

380 These proposed provisions explicitly regulate the obligation of courts to when deciding in each specific case, take into account all special factors, and exempt the parties from payment of the amount of the public attorney's fee in situations where payment of that amount would result in violation of their right to access the court and right to property.

381 European Commission, 'Bosnia and Herzegovina Report 2021' (General Publications) COM (2021) 644 final, 26.

382 SA (Decision on Admissibility and Merits) AP 1101/17 (Constitutional Court of BiH, 22 March 2018). See also section 14.2.2.

383 Letter by the FBiH Attorney's Office to TRIAL International (25 October 2021); Letter by the Office of Attorney General of BiH to TRIAL International (1 November 2021).

384 TRIAL International and Yale Law School's Lowenstein International Human Rights Clinic (n 309).

385 TRIAL International, 'Bosnia and Herzegovina: Thousands of people still expecting justice' (2019) < <https://trialinternational.org/latest-post/bosnia-and-herzegovina-thousands-of-people-still-expecting-justice/> > Accessed 28 September 2021.



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found that this practice “(...) is as unethical as it is unacceptable, and runs contrary to the international standards on the protection of victims of serious violations of human rights and humanitarian law.”³⁸⁶

As for access to compensation in criminal proceedings, TRIAL International has in the past carried out many activities aimed at encouraging prosecutors to take into account, in addition to prosecuting perpetrators, the segment of criminal proceedings concerning all the prerequisites that need to be in place for awarding compensation to injured parties. In addition to numerous activities of training, sensitisation and awareness raising of relevant professionals, TRIAL International has published and disseminated manuals and other publications that try to positively influence the development of this practice.³⁸⁷

To motivate all prosecutors to work on this aspect of cases before them, several initiatives have also been launched for the issuance of binding instructions by Chief Prosecutors or by the High

Judicial and Prosecutorial Council of BiH. To date, only the Brčko District Prosecutor’s Office has issued such instructions³⁸⁸. Discussions are underway to find ways to encourage prosecutors to work on compensation claims in other prosecutors’ offices, either through instructions from superiors or through appropriate performance assessment of the efforts made to gather evidence necessary for these claims and investigate the financial situation of suspects/defendants.

In response to difficulties in collecting awarded compensation, aside from the prosecutor’s commitment to investigate the financial situation of defendants, there is still a need to establish a mechanism (special fund or budget line) for the state/entities to ensure, according to the principle of subsidiary liability, the payment of compensation to victims in situations where collection from the direct perpetrator through enforcement procedures has failed. Such a conclusion was adopted, for example, at the TAIEX (Technical Assistance and

386 OHCHR, ‘Preliminary Observations from the Official Visit to Bosnia and Herzegovina by the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Mr. Fabián Salvioli’ (December 10th 2021) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27946&LangID=E>> Accessed on February 16th 2022.

387 For example, Hanušić Bećirović and Kajganić (n 256).

388 In January 2019.

Information Exchange) workshop on compensation in criminal proceedings, organised in cooperation with the European Commission and the High Judicial and Prosecutorial Council in 2016, and has been continuously highlighted in the conclusions of Expert Consultations of Prosecutors in Bosnia and Herzegovina for years.

An important opportunity to achieve this goal and improve access to reparations is the implementation of the UN CAT decision³⁸⁹, which is closely monitored by several national and international stakeholders. For example, it is covered by 14 key priorities from the European Commission's Opinion on BiH's application for EU membership that BiH needs to meet to continue on the path of EU integration.³⁹⁰ The implementation of the UN CAT decision is thus recognised as a means of supporting progress in two key priorities: reconciliation and improving the status of vulnerable groups³⁹¹.

Following advocacy activities by TRIAL International as the author of the communication, in April 2021 the BiH Council of Ministers instructed the BiH MHRR to submit a plan of action for the implementation of the UN CAT decision within three months.³⁹² In August 2021, the Ministry formed a working group to prepare a plan for the implementation of the decision by November 2021.³⁹³ At the time of writing, the working group has yet to start its work. The mentioned plan must address several rights of survivors, including a public apology, rehabilitation measures, and the payment of compensation awarded in criminal proceedings.

In addition to individual measures aimed at the victim who filed the communication, its implementation also represents an opportunity to address these

problems more broadly as they affect other survivors of conflict-related sexual violence. A recommended general measure regarding the establishment of an effective administrative reparations scheme and provision of equal access to rights for all victims can be operationalised as an incentive to harmonise various provisions governing the status and rights of wartime rape victims throughout BiH, e.g., by providing access to medical spa therapy for victims in FBiH. On the other hand, its implementation could pave the way for ensuring effective compensation for victims in cases where enforcement proceedings against the perpetrator have failed, following a recommendation that has been highlighted by professionals for several years, as described above.

16.3. Other relevant initiatives and changes

Among other initiatives to improve the status of survivors and their children, we should mention the "*Name of one parent*" initiative, launched in 2019 by the Association Forgotten Children of War, addressed to all local communities in FBiH in response to the problem of belittling the role of the mother in the legal system of BiH –with particularly painful consequences for these children as they grow up.³⁹⁴ Namely, in BiH, when filling out any document with the authorities, even the simplest administrative form or during the process of issuing personal documents, one must provide the father's name to be stated in parentheses between the name and the surname of the person, without the possibility of alternatively choosing the mother's name.³⁹⁵ For the reasons explained above, for children who do not know their father's name or do not want to mention it, it is very important to introduce the possibility of providing the mother's name instead.

389 For more information on the decision, see section 14.2.1.

390 See European Commission, 'Key findings of the Opinion on Bosnia and Herzegovina's EU membership application and analytical report' (2019) <https://ec.europa.eu/commission/presscorner/detail/de/COUNTRY_19_2778> Accessed 8 November 2021.

391 Key priority 5 and key priority 13.

392 The Council of Ministers of Bosnia and Herzegovina, 'Conclusions of the 33rd Session, held on 15 April 2021 – Information of Bosnia and Herzegovina on the actions taken in relation to the decision adopted by the UN CAT in accordance with Article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in connection, as per application no. 854/2017' (2021) <https://www.vijeceministara.gov.ba/saopstenja/sjednice/zakljuci_sa_sjednica/default.aspx?id=35529&langTag=hr-HR> Accessed 5 August 2021.

393 Ministry of Human Rights and Refugees, 'Decision on the Establishment of a Working Group for the Development of a Comprehensive Series of Measures and Activities Related to the Implementation of the Decision Adopted by the UN Committee against Torture' (9 August 2021).

394 Marija Arnautović, 'Borba djece rođene nakon ratnog silovanja: Bez imena oca u formularima' [The struggle of children born of wartime rape: No father's name in the forms] *Radio Slobodna Evropa* (28 May 2021) <<https://www.slobodnaevropa.org/a/udruzenje-zaboravljena-djeca-rata-inicijativa-ime-jednog-roditelja/31278763.html>> Accessed 30 September 2021.

395 For more information, see <http://zdr.org.ba/projekti/>

To date, a change has taken place in more than 15 municipalities of the Federation of BiH in response to this initiative – the forms have been adjusted and beneficiaries are no longer required to provide the father's name, but the name of one parent.³⁹⁶ The struggle is ahead to extend this initiative to educational institutions, employers, etc.³⁹⁷ The strong, positive and much-needed energy of these young people, on the one hand, and the positive response from these local authorities as a sign of their willingness to cooperate, on the other, provide hope for future opportunities to improve access to reparations in response to the needs of survivors and their children.

An important moment for survivors was also the adoption by the High Representative of the Law on Amendments to the Criminal Code of Bosnia and Herzegovina, specifically amending in July 2021 Article 145a, that regulates the prohibition of public approval, denial, justification or glorification of the crimes of genocide, crimes against humanity or war crimes of BiH. This gave BiH a new opportunity to condemn and discourage such negative practice through court proceedings.³⁹⁸ Now the preventive and repressive function of these legal novelties must be ensured.

17. Threats to effective reparations for conflict-related sexual violence

The processes of improving the scope of the right to reparations, as well as the general interest in the rights of victims of war crimes, are also influenced by political dynamics. The general indifference to the needs and problems of this vulnerable category of society usually briefly changes during election campaigns. However, all promises and enthusiasm directed at civilian victims of war are lost soon after the election process, when victims again feel abandoned and with less and less faith in the possibility of positive change.

As mentioned earlier in the report³⁹⁹, all structural problems of the complex socio-political landscape and excessive bureaucratisation adversely affect quality and uniform legal regulations, as well as effective equal access to fundamental rights. When the financial challenges of BiH are added to that, it becomes clear that the chances of enjoying the full range of rights provided by international standards for survivors are narrow.

An obvious example of obstacles that prevent the adoption of any strategic documents or framework laws that would provide a basis for facilitated and coherent exercise of rights in BiH are the failed attempts to adopt the Draft Law on Protection of Victims of Torture, the Draft National Strategy for Transitional Justice and the Programme for Victims of Conflicted-Related Sexual Violence.⁴⁰⁰ For some of them, this happened even before they entered the formal adoption process. In all three cases, the Republika Srpska authorities made reservations to the text, referring to threats to the entity's constitutional competences and lack of resources needed for implementation.⁴⁰¹

Similarly, the implementation of the UN CAT decision is currently facing a political blockage by RS representatives in the work of state-level institutions and mechanisms. The fact that general elections will be held in October 2022 has a negative effect on the general political climate and the prospects for the success of existing initiatives, as nationalist rhetoric and unwillingness to make any concessions and compromise solutions become particularly pronounced in the period that starts sometimes a year before the elections.

In such circumstances, victims must continue to rely on the existing complex social support system, as well as on individual court proceedings, to obtain some kind of compensation.

396 Interview with Ajna Jusić, President of the Association Forgotten Children of War (Zoom, 11 August 2021). There was no need to implement the initiative in the Republika Srpska, as the practice was already good. Ajna Jusić, Discussion with relevant stakeholders (Sarajevo, 28 October 2021).

397 Ajna Jusić, Discussion with relevant stakeholders (Sarajevo, 28 October 2021).

398 Lejla Gačanica, 'Važan iskorak za toliko potrebnu katarzu' [An important step forward for the much-needed catharsis] *Aljazeera* (August 2021) <<https://balkans.aljazeera.net/opinions/2021/8/19/zakonska-zabrana-negiranja-presudjenih-ratnih-zlocina-tice-se-svih-zrtava-rata>> Accessed 25 October 2021.

399 See, for example, section 13.1.

400 See section 16.1.

401 Amnesty International, 'We need support, not pity' (n 7) 30-32.



VIII. RECOMMENDATIONS

The above chapters not only provide a general overview of the situation in BiH regarding the possibility of establishing a system of reparations for survivors of conflict-related sexual violence, but they also indicate numerous deficiencies that survivors face in exercising their right to reparations. We can conclude that unfortunately no level of government in BiH provides a comprehensive and effective system of reparative measures that would provide the necessary prerequisites to address the full range of needs of survivors, their reintegration into society and enable a quality of life as close as possible to that prior to the serious violation of their human rights. In light of the above, we present recommendations that need to be implemented in BiH for the state to meet its international obligations and to improve the quality of life of survivors.

To facilitate access to reparations through administrative proceedings and provide access to equal rights

To the representatives of the governments at the level of Bosnia and Herzegovina, Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District:

Improvement of the legislative and policy framework on reparations

- Establish an efficient and comprehensive reparations framework to ensure the same level of protection of rights, equal benefits, and equal criteria for accessing rights for all victims of conflict-related sexual violence throughout Bosnia and Herzegovina.
- Recognise victims of conflict-related sexual violence as a separate category that requires specific solutions and reparation programmes tailored to their situation and needs, as expressly requested by survivors. At the same time, ensure equal treatment and benefits as already guaranteed to other categories of victims of war.
- Adopt the Transitional Justice Strategy and Programme for the Protection of Victims of Conflict-Related Sexual Violence.
- Adopt the Framework Law on the Protection of Victims of War Torture at the state level to ensure a uniform legal framework. Such Law will recognise victims of conflict-related sexual violence as a special category and clearly define their rights.
- A solution at the state level will also contribute to the feeling that victims are equally recognised in the entire territory of Bosnia and Herzegovina and would serve as a form of satisfaction.
- Alternatively to the adoption of the Framework Law, the governments should focus on improving the existing legal framework in all administrative units.
- Adopt new regulations or amend existing legal provisions governing the rights of victims (FBiH Law on the Principles of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children, RS Law on Protection of Victims of War Torture and BD Decision on the Protection of Civilian Victims of War) to harmonise them so that the requirements for acquiring victim status and associated rights are equal throughout Bosnia and Herzegovina.
- Give survivors a central role in identifying their needs and deciding on appropriate reparation measures. For this reason, future changes to the legislative framework relevant to civilian victims of war need to follow a survivor-centred approach and include broad consultations with survivors.

*Amendments to the existing legal framework:***To Republika Srpska**

- Evaluate the current implementation of the **RS Law on the Protection of Victims of War Torture** and amend its observed deficiencies .
- The removal of excessive obstacles for proving victim status such as the restrictive provision that recognises only medical evidence dating from the period 1990-2006 in cases of mental harm, or from the period 1990-1997 in cases of bodily harm is essential. Given that the cases of some victims have been documented by associations and bodies outside Republika Srpska, it is also necessary to amend the existing provisions to clearly state that evidence issued by all competent bodies and organisations within Bosnia and Herzegovina is acceptable. It is also necessary to introduce special procedural rules for victims who were granted protection measures. Finally, the deadline for applying for torture victim status, which is due to expire in 2023, should also be abolished.
- Increase the monthly allowance based on the status of a victim of war torture so it covers survivors' basic needs and is harmonised throughout Bosnia and Herzegovina. The current allowance is approximately one quarter to one third the amount provided in the Federation of Bosnia and Herzegovina and Brčko District.

To the Federation of Bosnia and Herzegovina

- Adopt a special Law on Civilian Victims of War.
- Prior to that, conduct broad public consultations on the Draft Law on Civilian Victims of War, such as the one that preceded the adoption of the analogous law in the Republika Srpska in 2018. The identified needs of victims should be taken into account, including the need for medical spa therapy and recognition of the status and rights of children born of rape.
- Ensure equal access to rights in all cantons. This can be achieved, inter alia, by having the law at the Federation of Bosnia and Herzegovina level provide for an obligation of the cantons to adopt both laws and bylaws within a given period of time specifying the manner in which civilian victims of war will exercise their rights.

To the Brčko District of Bosnia and Herzegovina

- Conduct public consultations including survivors and professionals on the draft Law on the Protection of Civilian Victims of War to ensure a better response to the real needs of survivors. This is particularly important given that the existing Decision on the Protection of Civilian Victims of War provides a narrower scope of guaranteed rights compared to the Federation of Bosnia and Herzegovina and Republika Srpska, including, for example, the failure to provide psychological support to victims.

To all three administrative units

- Provide survivors with free of charge access to medical spa therapy, which is recognised as an important measure of rehabilitation by both victims and medical and psychiatric experts. In the Federation of Bosnia and Herzegovina and Brčko District, this means providing such a possibility for the first time in the legal framework relating to this category, whereby harmonisation with the Republika Srpska legislation would be achieved. In the Republika Srpska, on the other hand, it is necessary to issue a public call for applications as soon as possible in order to provide this service in practice.

- Provide the possibility to achieve victim status and access to rights for persons who survived conflict-related sexual violence as members of military formations, or as persons who performed other tasks for the army, such as cooking, cleaning, etc., and who are thus potentially being linked to the status of members of the military.
- Ensure that children born of wartime rape are a legally recognised category of civilian victims of war entitled to necessary rights and benefits, in particular, facilitated access to and funding for their education as well as benefits and support measures in employment and housing. The existing legal framework and practices should be changed when issuing any type of public calls to introduce positive discrimination for children of survivors of conflict-related sexual violence, so that they are provided education, employment and housing benefits equal to those available to children of other war victim categories (e.g. children of fallen soldiers or veterans with war-related disabilities).
- Consider how to ensure long-term payment of survivors' allowances to address the fear they expressed regarding the uncertainty of the duration of their right to a monthly allowance.

| To facilitate access to reparations through court proceedings

To all relevant bodies at the level of Bosnia and Herzegovina, Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District

- Amend Civil Procedure Codes to enable victims of criminal offenses who testified under protection measures in criminal proceedings to maintain their identity protection in civil proceedings for compensation. This should be done following the example of the amendments to the Civil Procedure Code before the Court of Bosnia and Herzegovina adopted in 2021, drafted by a working group of the BiH Ministry of Justice comprising representatives of all administrative units.
- Review the position of the Constitutional Court of BiH from 2013 pertaining to the application of statutes of limitations to victims' compensation claims from the entities and the state on the basis of strict liability in light of relevant international standards, especially taking into account the 2019 UN CAT decision in *A v BiH*. The statute of limitation should not apply to claims made by torture victims.
- Adopt the Proposal for Amendments to the CPC prepared by TRIAL International which addresses the problem of imposing excessive financial burdens on citizens and legal entities in case they lose a dispute against public authorities. This would ensure the implementation of the initiative of the Bosnia and Herzegovina Parliamentary Assembly from September 2020, and narrow the space for future violations of rights in similar situations.
- Ensure adequate capacities for judicial institutions in the entities (district/cantonal prosecutor's offices and courts) responsible for prosecuting war crimes, including cases of conflict-related sexual violence, to which, in accordance with the revised state-level strategy, a large number of unresolved cases has been transferred to in 2020/2021. This applies both to the financing of their work and to the necessary training of staff, as well as to ensuring uniform jurisprudence that follows relevant international standards and good practices developed by the prosecutor's office and the court at the state level.
- Ensure the continuation of the practice of awarding compensation claims as part of criminal proceedings, as well as unify the practice before all judicial institutions in Bosnia and Herzegovina, including district/cantonal institutions, in particular through on-going professional development programmes and awareness raising.
- For compensation claims to be successfully filed, adjudicated, and collected, the first step is that prosecutors and attorneys use the tools available to them. Prosecutors need to inform injured parties in a timely manner of their right to file a compensation claim as part of criminal proceedings. Where the victim expresses the

wish to exercise this right, prosecutors should gather evidence necessary to establish the harm suffered, which primarily involves issuing an order for neuropsychiatric expert witness examination. Furthermore, to facilitate the payment of the damages awarded, prosecutors should, already during the investigation phase, conduct timely investigative actions to establish the financial situation and assets owned by the suspects, and establish contact with the representatives who shall then file an injunction motion pertaining to perpetrator's assets.

- Chief prosecutors or the High Judicial and Prosecutorial Council of Bosnia and Herzegovina need to issue binding instructions, and use and introduce appropriate procedures for evaluating efforts made by prosecutors in that respect. This would provide an adequate response to the activities of prosecutors dedicating their time to compensation claims in criminal proceedings, as well as encourage other prosecutors to follow that approach.
- Whenever possible, judges should decide on the compensation claim as part of criminal proceedings, without unnecessarily referring victims to civil proceedings, and to take additional measures to support the practice of effective enforcement of compensation claims.
- Provide the basic prerequisite for access to compensation – free legal aid, i.e., representation of victims. This will contribute to the entire process of filing compensation claims and asking for interim measures to be issued in order to secure subsequent payment to be successful.
- Improve the work of the Free Legal Aid Office at the BiH Ministry of Justice by appointing the head of the office and hiring permanent staff, providing appropriate technical support, and supervising the implementation of its duties. It is important to ensure regular and uninterrupted communication and cooperation between prosecutors, witness support offices and victims' representatives. One of the methods for achieving this goal may be a memorandum of cooperation between the Court of BiH, the Prosecutor's Office of BiH and the BiH Ministry of Justice (Free Legal Aid Office). Such practice should then be followed by entity prosecutors' offices/courts and free legal aid centres/institutes.
- Ensure that all administrative units adopt appropriate legislation on free legal aid and harmonise existing legislation in line with the BiH Law on Free Legal Aid. Provide adequate resources and capacities to free legal aid bodies in all administrative units in order to provide victims with effective access to free legal aid and equal access to justice, regardless of where they reside and before which court they testify.
- Ensure that survivors effectively receive the compensation awarded in criminal proceedings. This means that even in cases where compensation fails to be collected from the perpetrator, the authorities need to provide payment to the victim. This could be achieved by establishing a special state fund or special budget lines as a subsidiary source of compensation for the damage caused.
- Ensure immediate full implementation of the UN CAT decision in the case of Mrs. A v Bosnia and Herzegovina. This implies, inter alia, a prompt start and finalisation of activities of the working group established to that end, as well as timely operationalisation of the adopted implementation plan.

To Republika Srpska

- Stop claiming the costs of civil proceedings from the victims of war crimes whose compensation claims were rejected due to the application of statute of limitations. In the meantime, ongoing enforcement proceedings against victims need to be suspended immediately. It is also necessary to consider the possibility of returning to survivors the costs already paid by them.

| To the international community

- Continue to support the efforts of local organisations and victims' associations aimed at improving relevant laws and practices and implementing international recommendations and standards. This includes formulating appropriate recommendations for government officials, constant monitoring of their activities, and continuously emphasising the need to improve victims' rights.
- Continue to support initiatives and programmes that provide assistance to victims of conflict-related sexual violence through legal and psychosocial assistance and reintegration, including supporting funding for the work of public bodies and NGOs currently providing these services and, most importantly, for victims' associations.

| Regarding the specific needs of victims, we additionally highlight the following recommendations aimed at all stakeholders:

- Conduct broad sensitisation campaigns and work on issues of conflict-related sexual violence in order to minimise and prevent the stigmatisation of survivors and their families . As part of this work special efforts need to be made to address the specific problems of men who have survived this crime and suffer double stigmatisation as a result. In this context, it is especially important to achieve uniform standards in the media, as a significant means of shaping public perception, for the purpose of sensitised reporting on conflict-relates sexual violence and combatting stigma.
- Ensure that all staff of health, social, judicial, educational and similar institutions with which survivors, children born of wartime rape, and other children of survivors get in contact, treat them in a trauma-informed, sensitised and dignified manner while complying with the "Do no harm" principle . To this end, use existing manuals, issue new guidelines and conduct trainings tailored to employees who work and come into contact with war crimes survivors, with clear directives aimed at combating stigma and reducing re-traumatisation during such contacts.
- Make additional efforts and find more creative solutions to continuously inform survivors about their rights and the procedures through which they can exercise them. This includes more intensive cooperation with victims' associations, organisations working with survivors, local communities (municipalities, local community councils, local health centres/family medicine centres) through which information and informative materials can be further disseminated, which would ultimately contribute to their availability in all communities, including in rural areas.
- Implement the initiative "Name of one parent" to abolish the requirement of stating the name of the father or both parents in administrative procedures throughout Bosnia and Herzegovina.
- All institutions in BiH should, in a harmonised manner, grant priority in access to health services to survivors equally to other victims of war, and recognise cards issued by associations of war victims as a proof of status or special cards issued by institutions for this purpose.
- Provide mental health centres with the required human resources so that they can provide psychological support to survivors in a timely, regular and as needed manner. The psychological support provided by these centres should be adjusted to the real needs of survivors and have a long-term, psychotherapeutic character.
- Provide psychological support and make it available in a timely manner to survivors' family members, where there is a need, whether for individual or family psychotherapy, specialist sexuality counselling or marital/partner counselling. Special attention in this regard should be paid to the children of survivors of conflict-related sexual violence, especially children born of rape and children who witnessed the crimes.

- In relevant provisions, define programmes for the improvement and protection of mental health support for survivors of conflict-related sexual violence. Mental health centres to create specific programmes to better respond to the needs of survivors. As part of this work, establish intersectoral cooperation with non-governmental organisations that provide psychological support and victims' associations, with which mental health centres can implement joint activities.
- Ensure psychosocial support for survivors throughout the reparation application process, both the court and administrative one, in order to support survivors facing painful testimony/investigative processes.
- Ensure home visits, and inform survivors of this possibility in a transparent manner, for those survivors who, for justified reasons such as poor health or distance, are not able to visit mental health centres. For survivors living in rural areas, additional measures need to be taken to ensure unhindered access to all health and psychological services including due care about protecting the victims' privacy/identity.
- Provide employment opportunities and adequate, special training programmes for those survivors who are still able to work, and adapt them to their needs.
- Support by all means necessary survivors of conflict-related sexual violence who want to start their own business. This could be achieved by establishing a special fund for victims. In the Federation of BiH, it would be even easier to implement it through appropriate legal changes or the adoption of appropriate bylaws that would allow this category of the population to apply for the FBiH Fund for Vocational Rehabilitation and Employment of Persons with Disabilities. Such a change would not result in a significant burden on the Fund, as the number of survivors willing to start their own business is not significant. On the other hand, the impact on survivors would be immeasurable, given examples of the psychological and economic empowerment of other women who have gone through such an experience. In addition, provide interested survivors with access to tools that can help them to feed their families and earn income. In rural areas, this could include for example, the provision of tools for agriculture (e.g. purchase of greenhouses) or cattle breeding.
- Ensure priority and effective access for victims of conflict-related sexual violence to general public calls for access to agricultural incentives and other forms of support for individual entrepreneurship.
- State institutions in all administrative units should allocate additional funds for victims' associations in order to:
 - (i) support their joint activities, such as information on available rights and processes of judicial or administrative reparations, referrals to public institutions and NGOs that offer various forms of support, but also creative workshops as a rehabilitation measure, and joint excursions and gatherings, celebrations of important dates, commemorations of places of suffering and detention, and important international initiatives/commemorations
 - (ii) support activities whose contribution extends beyond the association itself, such as advocating for legal changes that would improve the rights of survivors
 - (iii) provide support needed for ensuring and increasing the fundraising capacities of victims' associations.
- Ensure timely and effective investigations, as well as prosecution, of violations of the prohibition of public approval, denial, trivialisation or attempts to justify or glorify crimes of genocide, crimes against humanity or war crimes contained in the Criminal Code of Bosnia and Herzegovina. For preventive purposes, the wider community has a crucial role to play in promoting respect for the provisions of this law. Although its provisions cannot be applied retroactively, local communities to change names of streets, public institutions and remove monuments or other forms of memorialisation of convicted war criminals and established war crimes in the public space.
- Provide survivors and their families with additional satisfaction measures in the form of establishing facts, promoting court-established facts in the public, erecting monuments to victims, public apologies, naming streets after victims, marking important dates and similar memorialisation initiatives.



IX. CONCLUSION

Even 26 years after the end of the war, survivors of conflict-related sexual violence (and their families) in Bosnia and Herzegovina have not gained full access to the diverse range of reparations they desperately need, guaranteed by relevant international human rights standards. An administrative reparations programme has never been established through which all survivors in BiH would be provided with easy access to compensation and other forms of reparation, under equal conditions and with the same level of protection of rights.

In the absence of such a programme, survivors have tried and are still trying to access compensation through court proceedings, and have encountered a number of difficulties, both in civil and criminal proceedings. The current legal framework pertaining to victims of conflict related sexual violence, although not offering compensation in the true sense of the word, nevertheless provides a very important basis for protecting their rights and responding to some of their basic needs. Despite this fact, the legal framework is non-harmonised – it differs in the three administrative units (RS, FBiH and BD) both in terms of the requirements for accessing rights and the set of rights guaranteed to victims, as well as the manner and degree of their implementation.

This Study provides a detailed analysis of the current legal solutions and the practice of administrative bodies, civil and criminal courts and prosecutors' offices, as well as all other authorities whose decisions impact the victims, and the actions of services that victims come into contact with. Survivors' perceptions of the basic problems they face, the specific needs they have, and their views on the most appropriate measures to be taken in response to the identified needs and difficulties are presented.

Based on the analysis of the normative framework and existing practices, which is primarily guided by the opinions of survivors and supplemented by information obtained from other relevant stakeholders and reports on this topic, recommendations were identified aimed at improving access to reparations for this vulnerable population.

The messages and recommendations from this Study primarily refer to judicial actors and government representatives in Bosnia and Herzegovina, its two entities – FBiH and RS – and the Brčko District of BiH, but also to international organisations that have significant power to support efforts towards improving the protection of the rights of survivors of conflict-related sexual violence.

All civil society actors, including victims' associations, non-governmental organisations and media representatives, can and should participate in advocacy efforts aimed at implementing respective recommendations and thus at addressing the needs of survivors.

A significant aspect of this process, however, can and should be addressed at the individual level, starting with each individual employee of the health, education, judicial or other institution, and ultimately each person who in any way comes into contact with survivors and their families. All changes, from broad legislative changes, individual judicial practices, to changes in the behaviour of officers talking to survivors at the counter, start with individuals, their willingness to understand and sympathise, and their responsibility to address the heavy burden that these people stoically endured in recent decades. We hope that this Study will contribute to the achievement of this complex goal.



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