

WHEN EVERYONE IS SILENT

REPARATION FOR SURVIVORS OF WARTIME RAPE IN
REPUBLIKA SRPSKA IN BOSNIA AND HERZEGOVINA

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INTRODUCTION

"We have women who may be living among us and who are victims of (wartime) rape. But if you're not recognized and feel like a victim again, it is easier for you to stay quiet. So everyone stays silent about it. And that is the most distressing side of it, when everyone is silent."

Stanojka Tešić, Forum žena Bratunac, interviewed by Amnesty International in April 2012

As with other countries in the former Yugoslavia, Bosnia and Herzegovina (BiH) is still struggling with the legacy of the crimes committed during the 1992-1995 war. One of the least visible, but most keenly felt, injustices is the ongoing failure to provide survivors of wartime rape and other forms of sexual violence with the reparation they desperately need - and are entitled to under international law.

Following the 1992-1995 war in BiH, Amnesty International gathered a significant body of evidence confirming that crimes of sexual violence were committed. The organization has continued to collect numerous testimonies of women who were subjected to torture, including rape, which was often systematic and repeated, sexual slavery, forced pregnancy and other crimes of sexual violence.¹ Since the end of the war, Amnesty International has been calling on the authorities of BiH to investigate those who may be responsible for these crimes in effective and impartial criminal processes, and to provide survivors with access to effective reparation.

In 2009, Amnesty International published a comprehensive report "*Whose Justice? Bosnia and Herzegovina's Women are still waiting*" (Index: EUR 63/006/2009). This report documented how the authorities in BiH have neglected their obligation to provide justice and reparation to survivors of sexual violence committed during the 1992-1995 war. It provided an in-depth analysis of the distressing situation in which survivors live many years after the war, the legislative and policy measures that are in place in both entities, and the steps authorities at different levels should take to ensure justice and access to reparation for women survivors of wartime sexual violence.

Between 2011 and 2012, Amnesty International visited BiH several times in order to find out whether the situation of wartime rape survivors has improved since 2009. Concluding that very little has changed in the lives of survivors, Amnesty International decided to detail in separate briefings the situation in different parts of the country.

In March 2012, Amnesty International published the first of these briefings "*Old crimes same suffering: No justice for survivors of wartime rape in north-east Bosnia and Herzegovina*" (EUR 63/002/2012), which examined the situation in the Federation of Bosnia and Herzegovina.

The report "*When everyone is silent: Reparation for survivors of wartime rape in Republika Srpska in Bosnia and Herzegovina*" is based on Amnesty International's latest visit to Republika Srpska (RS) in April 2012. It analyses the failure of the RS authorities to respect the right to reparation of survivors of wartime rape.

The investigation and prosecution of perpetrators of crimes under international law is a key component of the redress that survivors of these crimes are entitled to. It is an obligation that the authorities of BiH and its constituent entities are failing to meet. Out of the tens of thousands of alleged crimes of sexual violence committed against women and girls during the war², fewer than 40 cases have been prosecuted by either the International Criminal Tribunal for the Former Yugoslavia in The Hague, or by state and entity courts in BiH since 1995.

Criminal justice is only one aspect of redress for survivors of wartime rape and other forms of sexual violence. For many survivors of rape and other forms of sexual violence the story does not necessarily end in a courtroom. Many still struggle in their daily lives with the physical, emotional and social consequences of the crimes committed against them³. These consequences continue to be ignored by the RS authorities and society as a whole, prolonging and aggravating the suffering of survivors their lack of justice.

UN DEFINITION OF REPARATION⁴

Reparation is the term for the concrete measures that should be taken to address the suffering of the survivors and victims and to help them rebuild their lives. There are five recognized forms of reparation: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

- Restitution includes measures aimed at re-establishing, as much as possible, the situation that existed before the violation happened, including restoration of property rights, employment, liberty, citizenship or residency status.
- Compensation involves monetary payment for “any economically assessable loss.” Although the damage caused by the violation and the amount of compensation related to it has to be evaluated in economic terms, it does not mean compensation only covers material damage.
- Rehabilitation aims to address any physical or psychological harm caused to victims including “medical and psychological care as well as legal and social services.”
- Satisfaction includes important symbolic measures such as: verification of the facts and full and public disclosure of the truth; an official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; public apology, including acknowledgement of the facts and acceptance of responsibility; judicial and administrative sanctions against persons liable for the violations; and commemorations, memorials and tributes to the victims.
- Guarantees of non-repetition involve measures aimed at ensuring that victims are not subject to other crimes or that the crimes are not committed again.

BOSNIA AND HERZEGOVINA

OBLIGATIONS UNDER INTERNATIONAL LAW

In order for BiH to meet its international human rights obligations, its authorities must provide survivors of wartime rape with full reparation, including rehabilitation.

According to the existing legal framework in BiH, psychological, economic and social support is provided by social welfare institutions. However, in BiH there is no central government body responsible for the social welfare system. This responsibility is discharged at the entity level, including through the introduction and implementation of legislation, the allocation of resources and the delivery of services. The social welfare system is organized at the entity level by the government of the RS, and delivered through municipal departments of social welfare which provide services directly to beneficiaries.

However, as the ultimate duty bearer under international law, the government of BiH is developing a number of legislative and policy measures aimed at fulfilling its obligations to ensure reparation for survivors of crimes. Measures developed at the state level are also needed to ensure the equality of treatment of survivors across the country, regardless of survivors' place of residence, ethnicity or any other ground.

These measures will require implementation at the entity level. It is therefore essential that the entity authorities engage constructively in discussions on these issues at the state level, in order to discharge their own obligations towards survivors living in their territory.

An ambitious draft national Strategy on Transitional Justice was finalized in June 2012.⁵ This policy document aims at ensuring access to justice and reparation for all civilian victims of war, including survivors of sexual violence.

A draft Law on the Rights of Victims of Torture and Civilian Victims of War is intended to give all civilian victims of war, across the country, equal access to specific social benefits and other measures of social support that they need as a result of the violations they suffered during the war. Although the drafting process was initiated in 2010, the Law has still not been approved.

The BiH Ministry for Human Rights and Refugees (MHRR) is co-ordinating an initiative to draft a Programme for Victims of Sexual Violence in Conflict and Beyond – 2012-2016. The aim of the Programme is to develop tools that will ensure access to reparation specifically for survivors of sexual violence. Apart from the solutions proposed for improving the social and economic situation of the survivors and reducing the stigma they face in society, the Programme aims at defining the basis for the realization of survivors' rights to social welfare and healthcare at the local level. The MHRR established a working group in charge of drafting the Programme, composed of representatives of relevant state and entity institutions,

NGOs and experts.

Due to the fragile political situation in the country, as well as its complex structure and fragmented institutional and legal framework, it is unclear when or whether these initiatives will be finalized and adopted.

THE SITUATION IN REPUBLIKA SRPSKA

In the Federation of BiH, legislation at least provides for the formal recognition of women survivors of wartime rape as civilian victims of war, entitling them to a range of different services, while the NGO sector is actively involved in reaching out to and assisting this population. However, the entity government of the RS is still failing to acknowledge the needs of wartime rape survivors – indeed, the existence of a problem at all – and is therefore failing to provide adequate reparation.

It is impossible for Amnesty International to assess the number of women and girls who were raped during the war and who currently live in the territory of the RS. To the organization's knowledge, the RS authorities have never made a meaningful attempt to collect data on this population, to understand their problems, and to develop policies that would address their specific needs.

The RS authorities have also made very little effort to stimulate public discussion around, and de-stigmatize the legacy of, the crimes committed against these women during the war. The resulting silence has become one of the biggest obstacles to wartime rape survivors realising their rights in the RS.

"[W]e are aware of these women. Often, out of fear of stigma, they don't want to say they were raped, so they just say that they went through different types of torture. But we know some of them were raped, and there is nothing we can do to encourage them to speak out. On the other hand, it is understandable that they don't want to talk about it. They know that sharing their experience in public would only make them feel stigmatized and 'marked' in a way. Maybe if they knew this was going to improve their lives, they would speak out. But they can't obtain status of civilian victim of war, there are no services designed to help them deal with trauma and other psychological or physical problems, so they end up hiding their experiences from everyone, including sometimes from their family members."

Vinko Lale, president of the local association of camp inmates in Bratunac, one of the branches of the RS Association of Camp Inmates, interviewed by Amnesty International in April 2012

In the media, very little is reported about the issue. Instead, war-related media reports overwhelmingly focus on investigations and trials of suspects and rarely give voice to the concerns of survivors.



Stanojka Tešić, Forum žena Bratunac, interviewed by Amnesty International in March 2012

“War crimes suspects are important, they take up media space. The media focus needs to shift towards victims. There has to be more talk about them, as this is the way empathy develops.”

Stanojka Tešić, Forum žena Bratunac, interviewed by Amnesty International in March 2012

In such an environment, where survivors are largely hidden from view, it is difficult to expect civil society organisations based in the RS to work specifically with women wartime rape survivors. There are no non-governmental organizations based in the RS that work specifically with women wartime rape survivors. There are women’s NGOs that provide psychological support and other services to women victims of domestic violence and women victims of trafficking, but these organizations told Amnesty International that they are generally not approached by wartime rape survivors for assistance; as Nada Golubović, the leader of one such NGO, called Udružene žene Banja Luka put it: *“[w]e would never turn them down if they came to seek assistance from us. The problem is they never do”*.

Likewise, victims’ associations, such as the RS Association of Camp Inmates, which has local branch associations across the RS, count rape survivors amongst their members but they do not have any specific programs of support for them.

LACK OF LEGAL RECOGNITION OF SURVIVORS LIVING IN THE RS

The general lack of any initiatives on the part of the RS authorities to address the issue of wartime rape is reflected in the inadequate legal recognition of wartime rape survivors.

The current RS Law on the Protection of Civilian Victims of War guarantees special measures of social protection – primarily in the form of financial assistance – to people who suffered at least 60 per cent damage to their bodies as a result of torture, assault, rape, or other crimes committed in the course of the conflict. Applications for this status were accepted up until 2007. The assessment of bodily damage was conducted by health commissions on the basis of the *Rulebook on criteria for estimation of military disabilities*, which does not refer to

psychological damage.

Recognised civilian victims of war in the RS are eligible for monthly benefits ranging between 100 convertible marks (€50) and 350 convertible marks (€175.50), depending on their bodily damage.

However, this law has excluded a great many survivors of sexual violence from the benefits it offers.

Some survivors that Amnesty International spoke to had difficulty obtaining all the medical documentation required to prove their claims due to the lack of appropriately qualified doctors able to provide them with such documentation. Others had problems because they lost the medical documentation which was issued during the war or because it was destroyed.

"I went to the hospital in Zvornik to get a copy of my medical documentation from during the war. I was told they don't keep documentation longer than 10 years."

Survivor from Zvornik, interviewed by Amnesty International in April 2012

Many women with whom Amnesty International spoke in 2009 and who were likely to have been eligible, had not applied for victims status by 31 January 2007, often on account of the strong social stigma attached to sexual violence. Some of them were simply unaware of the law.

Most significantly, the Law focused exclusively on physical damage thereby excluding the many survivors of sexual violence who could not satisfy the 60 per cent bodily damage criterion but who nonetheless continue to suffer serious psychological consequences.

INADEQUATE REHABILITATION PROGRAMMES FOR WARTIME RAPE SURVIVORS

As the UN Special Rapporteur on torture has stated, rape is "an especially traumatic form of torture" and it may have "insidious correlative consequences".⁶ Moreover, the UN Special Rapporteur on the Right to Health has stated that "Rape and other forms of sexual violence [...] all represent serious breaches of sexual and reproductive freedoms, and are fundamentally and inherently inconsistent with the right to health".⁷

Rehabilitation, as one of the forms of reparation to which survivors are entitled under international law, includes access to medical and psychological assistance, which is particularly important for survivors of rape and other forms of sexual violence.

The fact that civilian victims of war suffering post-traumatic stress disorder or other forms of psychological (rather than bodily) damage were not entitled to social benefits under the RS Law on the Protection of Civilian Victims of War is symptomatic of the failure to acknowledge the specific needs of wartime rape survivors. In many cases, the rape and sexual violence to which they were subjected resulted in trauma and other psychological injuries, but they were not always accompanied by physical injury. Moreover, even if the law allowed some wartime rape survivors to obtain the status of a civilian victim of war, it has not guaranteed them all of the services they need.

As a result of rape and other war related human rights abuses, many survivors have developed

post-traumatic stress disorder (PTSD) and other psychological syndromes. The psychological effects of their trauma include the feeling of insecurity, shame, self-blame, depression, fragmented memories, lack of concentration, nightmares, flashbacks, anxiety or mistrust of other people.⁸ However, as psychological harm was not taken into account when framing the status of civilian victim of war, the benefits provided under this law do not extend to psychological care.

Wartime rape survivors suffering from psychological problems can in theory access psychological services just like any other person in RS. These services are delivered through Mental Health Centres (MHCs), which are part of local healthcare centres. In April 2012, Amnesty International met with representatives of the RS Ministry of Health and Social Protection and one of the MHCs, who confirmed that these institutions have not developed any specific programmes to identify and respond to the needs of wartime rape survivors. They do not engage in any outreach activities for wartime rape survivors, and do not provide any services tailored to needs of survivors of rape and other forms of sexual violence.



Healthcare Centre in Zvornik, RS

"In the past years, even as a doctor, I am not sure I would know exactly who to turn to if I were one of these women. The problem that still remains is stigma. Fighting stigma is very difficult. One way to do it could be to gather women through NGOs to work on activities not necessarily related to providing support to survivors of wartime sexual violence, and use the occasion to disseminate the information about public services available to survivors of sexual violence. In this way, women who survived sexual violence will hear this information, but also women who have not been raped but know someone who has, they will pass the information on to them."

Ljiljana Ivančić, Director of MHC Srebrenica, interviewed by Amnesty International in April 2012

Amnesty International talked to many survivors of rape who have been attending psychotherapy organized by NGOs during its research in the Federation of Bosnia and Herzegovina. They all emphasized how their lives had changed since they started receiving this kind of assistance.

“we were all in some kind of dark tunnel with no exit until we got here (to the psychotherapy organized by an NGO).”

Survivor, interviewed by Amnesty International in 2009

“when I do not come here I feel like if I've lost something. Here I can cry, scream and talk when I need to.”

Survivor, interviewed by Amnesty International in 2009

CONCLUSIONS

BiH has still some way to go to meet its obligations to victims of the 1992-1995 war. Almost 20 years after the end of the conflict, the cruel failure to ensure justice for survivors of wartime sexual violence must at last be brought out of the shadows, if the victims themselves are to rebuild their shattered lives and the families, communities and societies to which they belong are to heal.

In the RS, the true extent of sexual violence during the conflict has never been fully acknowledged by the authorities or society more broadly. Survivors of wartime sexual violence are not recognised in law and their needs are not being met in practice.

Justice for survivors requires both the prosecution of perpetrators and the acknowledgement of – and resolve to redress – the continuing consequences of their abuse. The RS authorities must move to meet these needs.

RECOMMENDATIONS

Amnesty International recommends that the RS authorities:

- Recognize that rape and other forms of sexual violence were committed during the war, by taking concrete steps towards the improvement of the situation of this population living in the RS. These steps should include collecting data on survivors of wartime rape and other forms of sexual violence, understanding and quantifying their problems, and developing policies that would address their specific needs.
- Amend the RS Law on the Civilian Victims of War: firstly, by creating a separate category of survivors of rape and other forms of sexual violence which does not impose a percentage of bodily damage as the only criteria for granting the status; secondly, by re-opening the applications procedure.
- Ensure that medical and psychological care is available and accessible to women survivors of wartime rape and other forms of sexual violence. This could be done, among other ways, by investing additional capacities and resources of MHCs and identifying the appropriate ways for the MHCs to be able to reach out to and address the psychological needs of survivors.
- Introduce financial and other practical measures to NGOs, such as women's NGOs and victims' associations that could provide psychological and other support to survivors, regardless of the ethnic or religious identity of survivors.
- Ensure participation of all relevant entity-level authorities in the relevant state-level initiatives. Among others, concrete measures include participation in the development of the State Programme for Victims of Sexual Violence in Conflict and Beyond, and discussions at the state level aimed at the adoption of the BiH Law on the Rights of Victims of Torture and Civilian Victims of War and the BiH Strategy for Transitional Justice.

ENDNOTE

¹ Bosnia and Herzegovina, Rape and Sexual Abuse by Armed Forces (Index: EUR 63/001/1993), Amnesty International: <https://www.amnesty.org/en/library/info/EUR63/001/1993/en>

² Parliamentary Assembly of the Council of Europe. Resolution 1670 (2009). Sexual violence against women in armed conflict. Adopted on 29 May 2009, para. 6.

³ Whose Justice? Bosnia and Herzegovina's Women Still Waiting (Index: EUR 63/006/2009), Amnesty International: <http://amnesty.org/en/library/info/EUR63/006/2009/en>.

⁴ The UN Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Adopted by the UN General Assembly on 16 December 2005. Articles 19-21.

⁵ Presentation of the Working document of Transitional Justice Strategy in Bosnia and Herzegovina, <http://www.undp.ba/index.aspx?PID=7&RID=772>, last accessed on 1 October 2012.

⁶ Oral introduction to the report of the Special Rapporteur on torture to the 1992 session of the Commission on Human Rights, quoted in E/CN.4/1995/34/, para. 16.

⁷ Report of the Special Rapporteur on the right to the highest attainable standard of physical and mental health, Commission on Human Rights, Sixtieth Session, UN Doc E/CN.4/2004/49, 16 February 2004, para 25.

⁸ Whose Justice? Bosnia and Herzegovina's Women Still Waiting (Index: EUR 63/006/2009), Amnesty International: <http://amnesty.org/en/library/info/EUR63/006/2009/en>. pp. 54-55. The findings are based on interviews conducted with survivors in 2008-2009.

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