



‘WE NEED SUPPORT, NOT PITY’

LAST CHANCE FOR JUSTICE FOR BOSNIA’S WARTIME RAPE SURVIVORS

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Cover photo: A survivor looking at a destroyed family home in Eastern Bosnia. State assistance and aid programmes often don't reach women in remote areas.

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CONTENTS

EXECUTIVE SUMMARY	10
JUSTICE DELAYED	11
REPARATION: AN UNATTAINABLE RIGHT	11
KEY RECOMMENDATIONS	13
METHODOLOGY	14
BACKGROUND	16
1. ACCESS TO JUSTICE	19
1.1 QUESTIONS ABOUT THE CLASSIFICATION AND SENTENCING OF CRIMES	20
1.2 DELAYS IN PROSECUTION OF WAR CRIMES AND BACKLOG OF CASES	22
1.3 RECENT IMPROVEMENTS AND REMAINING CHALLENGES IN THE PROSECUTION OF CASES OF SEXUAL VIOLENCE	24
1.4 REDUCED SENTENCES FOR PERPETRATORS OF WAR CRIMES OF SEXUAL VIOLENCE	26
1.5 THE NEED TO STRENGTHEN WITNESS PROTECTION AND WITNESS SUPPORT	27
2. REPARATIONS	30
2.1 FAILURE TO ADOPT DRAFT TRANSITIONAL JUSTICE STRATEGY	31
2.2 FAILURE TO ADOPT PROGRAMME FOR VICTIMS OF SEXUAL VIOLENCE IN CONFLICT	32
2.3 DISCREPANCIES IN THE LEGISLATION AND THE RIGHTS OF VICTIMS OF WARTIME SEXUAL VIOLENCE	32
ABSENCE OF STATEWIDE LEGISLATION GUARANTEEING THE RIGHT TO REPARATION	33
EXISTING PROTECTIONS FOR VICTIMS IN FEDERATION BIH	34

UNRECOGNISED IN REPUBLIKA SRPSKA	34
BRČKO DISTRICT - FAILURE TO ESTABLISH COMMISSION BLOCKING ACCESS TO STATUS AND BENEFITS	35
2.4 COMPENSATION FOR VICTIMS OF WARTIME SEXUAL VIOLENCE: A NON-ENFORCEABLE RIGHT	36
ADMINISTRATIVE COMPENSATION: DISCRIMINATION BASED ON RESIDENCE	37
COMPENSATION IN CRIMINAL PROCEEDINGS: A REMEDY IN THEORY	39
COMPENSATION IN CIVIL PROCEEDINGS: HIGH COURT FEES BLOCKING ACCESS TO COURTS	40
2.5 REHABILITATION	42
AVAILABILITY	43
ACCESSIBILITY	44
ACCEPTABILITY AND QUALITY	46
FREE LEGAL AID	47
2.6 RESTITUTION	47
2.7 SATISFACTION AND GUARANTEES OF NON-REPETITION	49
RECOMMENDATIONS	51
ACCESS TO JUSTICE	51
REPARATION	52

ACRONYMS

ACED	Agency for Cooperation, Education and Development
BAM	Bosnian Convertible Mark (currency)
BiH	Bosnia and Herzegovina
BIRN	Balkan Investigative Reporting Network
Brčko District	Brčko District of Bosnia and Herzegovina
CAT	United Nations Committee against Torture
CED	United Nations Committee on Enforced Disappearances
CEDAW	United Nations Committee for Elimination of Discrimination Against Women
CESCR	International Covenant on Economic, Social and Cultural Rights
CRSV	Conflict-related Sexual Violence
DPA	Dayton Peace Agreement
ECHR	European Convention on Human Rights
ECtHR	European Court for Human Rights
ESCR	United Nations Committee on Economic, Social and Cultural Rights
EU	European Union
EUSR	European Union Special Representative
FBiH	Federation of Bosnia and Herzegovina
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IMF	International Monetary Fund
IPA	European Union Instrument for Pre-Accession Assistance
NGO	Non-governmental Organization
OSCE	Organization for Security and Cooperation in Europe
RS	Republika Srpska
SFRY	Socialist Federative Republic of Yugoslavia
SIPA	State Investigation and Protection Agency
UK	United Kingdom

UN	United Nations
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
USA	United States of America
WHO	World Health Organisation

GLOSSARY

WORD	DESCRIPTION
CONFLICT-RELATED SEXUAL VIOLENCE	Incidents or patterns of sexual violence against women, men, girls or boys occurring in a conflict or post-conflict setting that have direct or indirect links with the conflict itself.
COMPENSATION	Compensation refers to the damages that victims are entitled to receive for the harm suffered. The compensation should strive to remedy the moral and material harm caused by the crime and take into consideration the lost opportunities, including education, employment, and earning potential.
MINIMUM CORE OBLIGATION	This refers to the obligation of the state to provide the highest attainable standard of health. In the context of the victims of conflict-related sexual violence, this should include the right to access health facilities, goods and services on a non-discriminatory basis, the provision of essential drugs and the equitable distribution of health facilities, goods and services. ¹
RAPE	When 1) A perpetrator invades the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body, and 2) The invasion is committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent. ²
REPARATION	Reparation refers to the measures adopted by the states to 'repair', as much as possible, past harms, help victims rebuild their lives and reintegrate into society. Reparation must be proportional to the gravity of the violation and effective in law and practice. Five recognized forms of reparation include restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition.
SEXUAL SLAVERY	When 1) A perpetrator exercises any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty, and 2) The perpetrator caused such person or persons to engage in one or more acts of a sexual nature. ³

¹ Committee on Economic, Social and Cultural Rights, *General Comment no. 14 on the right to highest attainable standard of health*, E/C12/2000/4, para. 43.

² International Criminal Court, *Elements of Crimes*, 2011, available at www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf

³ International Criminal Court, *Elements of Crimes*, 2011, available at www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf

WORD	DESCRIPTION
SEXUAL VIOLENCE	Any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting. Sexual violence takes multiple forms and includes rape, sexual abuse, forced pregnancy, forced sterilization, forced abortion, forced prostitution, trafficking, sexual enslavement, forced circumcision, castration, and forced nudity. ⁴
SPECIAL EVIDENTIARY RULES	Principles that apply in cases of sexual violence committed during conflict. The principles prohibit questioning victims about their sexual conduct prior and subsequent to the crime committed and further state that victim's consent cannot be inferred in situations where force, threat of force, coercive environment undermine victim's ability to give voluntary and genuine consent. ⁵
TRANSFORMATIVE REPARATION	Transformative reparation refers to the measures of redress that aspire to go beyond the traditional reparation and aspire to subvert, rather than reinforce, pre-existing structural inequality which may have be at the root of the violence. Transformative reparation strives to trigger positive social change and create conditions that enhance the economic empowerment and autonomy of the victims.

⁴ World Health Organization, *World Report on Violence and Health*, 2002, p. 149, available at http://apps.who.int/iris/bitstream/10665/42495/1/9241545615_eng.pdf

⁵ See Rule 70 of the ICC Rules of Procedure and Evidence. See also Special Court for Sierra Leone (SCSL) Rules of Procedure and Evidence, Rule 96, titled "Rules of Evidence in Cases of Sexual Assault", which sets forth the same principles



Map of Bosnia & Herzegovina, Map No. 3729 Rev.6, March 2007, United Nations © The United Nations

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 Amnesty International

EXECUTIVE SUMMARY

'I don't trust anyone any more, especially not the state. They all failed me. I live only for my son. He is the light of my day. As for me...this is not life. This is more like being on a life support machine.'

Sanja, Tuzla

Two decades after the end of the conflict, women victims of conflict-related sexual violence in Bosnia and Herzegovina (BiH) continue to suffer, not only from the consequences of past crimes, but also from the denial and neglect by the authorities and public service providers in all parts of the country. In the years that followed the 1992-1995 armed conflict leading to the dissolution of the former Yugoslavia, victims saw very little improvement to their living conditions and continue to be one of the most marginalised groups in BiH, still unable to access justice, truth or reparation.

Over 20,000 women and girls had been subjected to rape and other forms of sexual violence in nearly three years of the war. Many were enslaved and tortured and some forcibly impregnated in the so-called 'rape camps', while others were raped in a less organised way by various military and paramilitary groups in the course of the attacks against the civilian population. In the vast majority of cases, these women were victims of multiple crimes under international law, including rape, enforced disappearances and arbitrary detention. Many of them witnessed the torture or killing of their family members. As a result, they suffered devastating and often lasting physical and psychological consequences that still affect their day-to-day lives.

The findings from this report largely pertain to those women who decided to speak out and seek justice and redress in face of many obstacles. The vast majority of victims of sexual violence continue to suffer in silence. They are discouraged from seeking their rights by the variety of challenges, and continue to cope with the consequences of the crimes on their own. Living with often-paralyzing trauma and feelings of shame, and subsisting at the margins of society, many survivors are still struggling to rebuild their lives. The continued failure of the authorities to agree on measures to address their rights and provide recognition and adequate support threatens to leave the victims without the opportunity to see justice and reparation in their lifetime. Associations of survivors fear, and not without reason, that the political apathy and the resulting impasse will outlive most of them. In the words of Bakira Hasečić of the Women Victims of War association, 'most survivors will not live long enough to see justice being done'.

Under international law, the BiH state is responsible for guaranteeing victims' rights to justice, truth and reparation. This obligation includes equal and effective access to justice; and adequate, effective and prompt reparation for the harm suffered, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Collectively, these measures are meant to address the suffering of the victims and help them rebuild their lives.

Amnesty International's research conducted over a period of two years, reveals that the combination of factors – including the complicated and dysfunctional constitutional, judicial and administrative structure of BiH, political paralysis, and concern for resources – resulted in the failure of the authorities to provide the

victims with full and effective access to truth, justice and reparation. Systemic obstacles victims face when trying to access their rights and badly needed services have denied many of them the opportunity to find closure, rebuild their lives and successfully reintegrate into society. Lasting and often untreated trauma and the range of physical conditions caused by sexual violence have had a debilitating effect on these women. In addition to being victims of war, their enduring ailments often prevented them from finding employment and keeping jobs. Women victims of sexual violence tend to suffer high unemployment and poverty and are among the most vulnerable economic groups in BiH society.

This report reviews recent legislative and policy developments intended to address the problem of victims of wartime sexual violence and examines broader systemic and political factors that stand in the way of a comprehensive and meaningful reparation. The findings included in this report are based on desk and field research carried out between June 2015 and May 2017 and interviews with 89 participants, including survivors, representatives of non-governmental organizations, authorities and the International Community. The research reveals that despite considerable advances made in recent years, these efforts have been anything but systemic and genuinely restorative. With rare exceptions, the solutions remain haphazard and fragmented and vary significantly between the two entities, causing further uncertainty and discrimination and falling short of tangibly improving the lives of victims across the country.

JUSTICE DELAYED

Despite a recent surge in war crimes trials, including cases of conflict-related sexual violence, the prosecution of such cases remains disappointingly low. Since the beginning of war crimes trials in BiH in 2004, courts across the country have completed 123 cases involving war crimes of sexual violence and convicted 134 perpetrators. While this progress is welcome, considering the current pace of prosecution and over 900 still pending war crimes cases, including close to 200 cases involving charges of sexual violence, it may take another decade to clear the backlog. Given the magnitude of rape and sexual violence committed during the war, these figures represent a fraction of potential cases and victims fear that most perpetrators will never be brought to justice.

Over the past two years, Amnesty International observed notable improvements in the prosecution of cases involving conflict-related sexual violence. As a result of dedicated interventions and support by the International Community and local non-governmental organisations (NGO), most significant progress was achieved in the sphere of witness protection and support, with strengthened infrastructure, technical capacities and staffing at courts at all levels, and improved psychological support for victims and witnesses. However, other challenges threaten to undermine these achievements. Among those are troublingly high acquittal rates in several jurisdictions and often-reduced sentences for the perpetrators convicted of wartime sexual violence. According to local NGOs, in nearly two thirds of the verdicts, those convicted of wartime sexual violence received reduced sentences ranging from three to five years. Sentences were reduced after the application of mitigating circumstances, which are permitted under criminal legislation in BiH, but tend to be used almost routinely, yet in an inconsistent and arbitrary way, and without the required scrutiny of each individual case.

In some jurisdictions, the convicted perpetrators additionally benefit from provisions allowing for conversion of sentences of 12 months or under into fines. This practice virtually allows those convicted for the crimes of rape and sexual violence to 'buy' their time out of prison. Amnesty International noted at least two cases where perpetrators found guilty of rape and other sexual crimes signed plea bargain agreements or received reduced sentences and then paid fines to avoid imprisonment. Considering the extraordinary obstacles that they have to overcome in order to testify in court, victims perceive sentences that do not reflect the gravity of the crimes committed against them as a new punishment and an additional source of distress. As for Bosnian society, which is still reeling from the consequences of the devastating war, the slow and insufficient justice fosters the sense of impunity and undermines citizens' confidence in the criminal justice system.

REPARATION: AN UNATTAINABLE RIGHT

BiH failed to put in place a structured statewide system of reparation for victims of wartime sexual violence. Key policy and legal documents were never adopted by the authorities. In the absence of a formal reparations scheme, the victims instead have to navigate a complex array of social allowances at entity and cantonal level, or individual judicial proceedings, in order to obtain some form of reparation and to access support services.

For many victims of wartime sexual violence, the status of civilian victims of war represents a gateway to a desperately needed monthly allowance and other social benefits, including medical care and social support. Victims can apply for the status under separate, and often considerably different, laws in the Federation of BiH, Republika Srpska or Brčko District. A little over 800 victims of conflict-related sexual violence have obtained this status across BiH, the vast majority of them in the Federation of BiH. The legislation in Republika Srpska does not recognise victims of conflict-related sexual violence as a separate category and contains a range of highly restrictive provisions, including strict cut-off deadlines for application and the requirement to prove a high degree of physical disability. Collectively, these provisions have prevented most victims of sexual violence living in Republika Srpska from securing the status of civilian victim of war, therefore denying them access to a monthly allowance, as well as free healthcare, rehabilitation and psychological and social support. While the legislation regulating the rights of civilian victims of war in Brčko District is more open, the implementation challenges there continue to block women from securing the status.

This system in which victims' rights and access to services are regulated by entity and cantonal laws in an unharmonised and disconnected way, rather than universally guaranteed by the state, is inherently discriminatory, with the degree of access varying widely and depending on one's place of residence. Such circumstances discourage many victims from coming forward and force others who are desperate for assistance to engage in administrative acrobatics to obtain the status, including officially changing their places of residence and, in the process, availing themselves of accessible healthcare and other services in the places where they actually live. A number of women interviewed for the report changed their official residency from Republika Srpska or Brčko District to Federation of BiH in order to obtain the monthly allowance. Their cases speak about the painful tradeoffs they had to make; while gaining a modest monthly allowance which often provides a sole source of income for their families, losing residency in places where they actually live means that they lost the right to access public services, including badly needed health and social care.

In addition to the status of civilian victims of war which provides these women with modest benefits and some level of protection, international law and domestic legislation provide victims with an option to assert compensation claims for the damage suffered against perpetrators or the state in criminal and civil proceedings. In practice, however, persistent roadblocks continue to prevent victims from obtaining justice in these judicial processes. Although, in a recent positive development, courts started awarding compensation to the victims in criminal cases, the outcome of these lawsuits has been generally unreliable and final payments difficult to enforce. At the time of writing, not one of the four decisions with a final and binding verdict has actually been implemented. Most often, the perpetrators lacked funds and were unable to pay. BiH does not have a solidarity fund or an alternative mechanism to provide compensation to victims in instances where the perpetrators are unable to do so. This practically leaves the victims without the ability to effectively enforce their right to compensation in criminal cases.

Compensation claims asserted against the perpetrators or the state in civil proceedings present an even greater challenge. In instances where the perpetrators are unknown or unavailable to courts or where perpetrators convicted in criminal proceedings are unable to pay the damages, civil litigation against the state/entities presents the only avenue to financial compensation. However, without adequate free legal assistance, victims face significant disadvantages in civil courts: because they bear the burden of proof, they have to hire a lawyer and expose themselves to additional costs. Victims in these proceedings are often significantly retraumatised, as they have to yet again provide their testimony in courts, which at this level lack adequate measures of witness protection or psychological support. And, finally, after they manage to overcome all these hurdles, they almost routinely face negative court decisions due to the recent view of BiH Constitutional Court stating that statute of limitation should apply to compensation claims directed against the state or the entities. Following such rulings, victims are forced to pay high court fees or face administrative seizure of their assets. Amnesty International noted numerous cases of victims who had to deal with court police attempting to enter their homes and disconnect their fridges and stoves to recover the court costs. For the victims, the situation in which the authorities and courts expediently try to enforce these decisions, while treating outstanding compensation decisions awarded against convicted perpetrators with complete apathy, seems grossly unfair. Indeed, BiH Constitutional Court's position on the statute of limitations and the inability of the authorities to implement decisions on compensation leave victims without an enforceable right to remedy, which is contrary to international law.

Most victims of wartime sexual violence say that having access to adequate rehabilitation, including medical and psychological assistance, is critical to their recovery and reintegration in society. Yet, despite the fact that the women victims of war suffer from profound and lasting effects of sexual trauma and often debilitating conditions, the authorities in BiH have failed to provide them with adequate rehabilitation. In a highly fragmented health system and without a statewide programme for rehabilitation, victims depend on

the under-resourced health services that take little consideration of their special conditions or their special physical and psychological needs. Even those women who managed to obtain the status of civilian victims of war are not entitled to preferential treatment when accessing medical services and have to wait over a year in order to undergo basic medical check-ups, including gynaecological screening or mammography. The issue of access particularly adversely affects victims living in remote areas, where specialised services are not available. Psychological care and psychosocial assistance are typically provided by non-governmental organisations, but, due to limited resources and high demand, this support cannot reach all those who need it. Most women interviewed for this research said that the absence of adequate and specialised healthcare has had a significant effect on their ability to recover from deep physical and psychological trauma and move on with their lives.

Finally, apart from institutional and legal barriers that stand in the way of their recovery, the strong stigma attached to rape and sexual violence in BiH is a significant obstacle to the better reintegration of female victims into society. According to a recent United Nations Population Fund (UNFPA) study, as many as two thirds of the victims in BiH said they were subjected to condemnation, insults and humiliation – both by their families and the community. A common theme among the victims interviewed by Amnesty International is the sense that they are somehow responsible for what happened to them and that they had provoked the crimes. For many survivors, the insults and the repeated trauma are more difficult to cope with than the act of sexual violence itself. Yet, little has been done to eradicate the social stigma and patriarchal attitudes that hold women responsible for their rape across BiH, but particularly in rural areas where many victims live.

Denying full and effective reparation to women victims of war is a violation of their rights and runs the risk of undermining all other peace-building efforts made over the past two decades. In the face of the ageing and gradually declining population of survivors, the authorities in BiH should urgently agree on concrete measures that would make tangible improvement to the lives of the victims of conflict-related sexual violence. While the current political climate renders far-reaching reforms difficult, if not unlikely, the authorities at the level of entities and Brčko District must remove the existing barriers to access, end widespread discrimination and adopt legislation and measures within their respective jurisdictions that guarantee the victims' right in line with the country's obligations under international and national law.

The next several years represent potentially the final opportunity for the authorities in BiH to agree on systemic solutions to enable the victims to effectively claim their right to justice, truth and reparation. This is what makes this research timely and adds urgency to more assertive efforts at all levels of authority to adopt concrete and viable measures to enable the victims to finally, 22 years after the end of the conflict, find closure and restore dignity and a degree of normalcy to their lives.

KEY RECOMMENDATIONS:

- **To the BiH Council of Ministers:** Together with the authorities in the entities, consider and put in place a comprehensive statewide rights-based framework for redress for civilian victims of war, including survivors of wartime sexual violence. This would include the adoption of the Draft Strategy for Transitional Justice and Programme for Victims of Sexual Violence in Conflict and the Framework Law on Protection of Victims of Torture.
- **To the RS authorities:** Ensure that the Draft RS Law on Civilian Victims of Wartime Torture does not exclude victims of conflict-related sexual violence, including those of non-Serb ethnicity, from the right to obtain the status of civilian victims of war and the accompanying social and welfare benefits. The law should not include cut-off deadlines for applying for the status.
- **To the authorities at all levels:** Allocate sufficient funds and resources to ensure that victims have adequate, appropriate and timely access to healthcare and that psychological support and social services are provided in a manner that addresses their special needs.
- **To the EU:** Include concrete benchmarks related to the justice agenda, including access to justice and reparations for civilian victims of war, and monitor progress and offer guidance and support to BiH through pre-accession political dialogue and annual progress reports.
- **To the International Community:** Continue supporting initiatives and programmes that assist victims of conflict-related sexual violence with legal aid, psychosocial assistance and reintegration, including through funding legal aid providers and NGOs that are currently delivering these services.

METHODOLOGY

As a part of this research, Amnesty International sought to evaluate the existing legal and policy framework for reparation for female victims⁶ of wartime sexual violence in BiH and document recent efforts to address the victims' right to full and effective redress for the crimes they suffered during the 1992-1995 war. The study builds on the organisation's previous research and publications on the legacy of war crimes of rape and sexual violence in the former Yugoslav countries.⁷

Women were not the only victims of rape during the war. An estimated 3,000 men and boys were also subjected to various forms of sexual violence in detention camps. As men are less likely to report such crimes or speak out about them in public, the number is likely higher. A focused study on the consequences of rape and sexual violence suffered by men during the war would be of significant value; however, this particular research focuses on the legacy of such war crimes on female survivors, who were affected by them in greater numbers.

The findings included in this report are based on desk and field research carried out between June 2015 and May 2017. Over the course of the research, Amnesty International conducted eight field visits to BiH, including to Sarajevo, Banja Luka, Tuzla, Zenica, Prijedor, Bijeljina, Bratunac, Brčko, Goražde and Vlasenica, and interviewed 89 participants, including 25 victims of sexual violence, as well as representatives of associations of survivors and NGOs that support the victims, official representatives of the authorities of BiH, Federation of BiH and Republika Srpska, the international community and European Commission institutions and offices in Brussels and Sarajevo.⁸

All interviews were conducted in Bosnian/Croatian/Serbian and English with no interpretation. The interviews with the victims cited in the report were conducted by Amnesty International during separate research trips in June 2015, March 2017 and May 2017 and will not be individually referenced throughout the text. Unless otherwise indicated, the names of the survivors interviewed for this research were changed to protect their identity and privacy. In some instances, other identifying details, such as family status and names of places, have been withheld at the request of the interviewees. All have given their informed consent to the inclusion of their stories, or photographs, in this report.

⁶ This report will use the term 'victim' and 'survivor' interchangeably throughout the text, while acknowledging that the former is an appropriate legal term. The term 'victim' is used to describe the persons who suffered the war crimes of sexual violence. According to United Nations Principles and Guidelines on the Right to Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law (hereinafter: UN Basic Principles), December 2005, victims are 'persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law'. See Principle 8. Similar definitions appear in the International Convention for the Protection of All Persons from Enforced Disappearance, Article 24(1), and the Rules of Procedures of International Criminal Court (ICC), Art. 85.

⁷ Amnesty International, 'Rape and Sexual Abuse by Armed Forces', January 1993 (Index: EUR 63/01/93) (hereinafter: Amnesty International, 'Rape and Abuse by Armed Forces') and Amnesty International, 'Whose Justice? The Women of Bosnia and Herzegovina are Still Waiting', September 2009 (Index: EUR: 63/06/2009) (hereinafter: Amnesty International, 'Whose Justice?').

⁸ In addition to 25 women- victims of war, over the course of two years, Amnesty International researchers interviewed representatives of: TRIAL International (Sarajevo and Tuzla), Medica Zenica (Zenica), Vive Žene (Tuzla), Žena-žrtva rata (Sarajevo), Žene – žrtve rata RS (Banja Luka), Žene ženama (Sarajevo), Udružene žene (Banja Luka), BiH Association of Camp Inmates (Sarajevo), Fond lokalne demokratije (Sarajevo), Vaša prava (Sarajevo), Naš glas (Tuzla), Prava za sve (Sarajevo), BIRN (Sarajevo), Lawyer Nedžla Šehić, BiH Ministry of Human Rights and Refugees, BiH Ministry of Justice, BiH Parliamentary Assembly's Joint Committee on Human Rights, Federation BiH Ministry of Justice, Federation BiH Ministry of Labor and Social Policy, RS Ministry of Labor and Veterans' Affairs, RS Government Gender Centre, UN Women, UN Population Fund, UN Development Programme, International Organisation for Migration, Organisation for Cooperation and Security in Europe (OSCE) Mission to BiH, International Commission for Missing Persons (ICMP), Open Society Fund (Sarajevo), Office of the High Representative, EU Special Representative to BiH, Delegation of the European Union in BiH, EU Directorate-General for European Neighbourhood and Enlargement Negotiations, DG NEAR (Brussels).

Amnesty International would like to thank all those who assisted with the research and the preparation of this report, including the associations of civilian victims of war and NGOs, who not only provided information for the report, but also facilitated some of the meetings with the victims. Finally, the organisation would like to express deep gratitude to the women who agreed to share their profoundly personal stories and were so generous with their time and testimony.



A survivor sitting outside of her home in Northern Bosnia. Although physical wounds have healed, many women still battle with invisible, but lasting, consequences of the violence. © Ziyah Gafić

BACKGROUND

'I watched them take my father and my younger brother away. Then they brutally killed them and left their bodies in the field next to the house. My father was so old and frail; I don't understand why they needed to do this. These men were our neighbours. Then, I was taken to the camp where I lived through ten days of torture. There, they beat me and raped me and other girls, often in groups. They would wear balaclavas and ask me if I could guess which one was on top of me. These were all local boys....'

Elma, Vlasenica

The use of rape and other forms of sexual violence during the 1992-1995 war in BiH was widespread, as was documented at the time by Amnesty International and other organisations.⁹ The exact number of female victims of conflict-related sexual violence in BiH is widely disputed¹⁰, but the most reliable estimate – the one by the Council of Europe (CoE) – puts the figure at around 20,000.¹¹ The number includes Bosniak, Croat and Serb women who were often imprisoned in so called 'rape camps' and systematically and repeatedly raped, sexually enslaved and sometimes forcibly impregnated by military and paramilitary groups. Women were also raped, in a less organised way, during military attacks on the civilian population, and with the purpose of forcible displacement of civilians.¹² In the vast majority of cases, these women were victims of multiple crimes under international law, including rape, enforced disappearances and arbitrary detention. In addition to the violence they suffered, they often witnessed the torture or killing of their family members. As Amnesty International documented in earlier research, victims of sexual violence suffered devastating physical and psychological consequences as a result of the crimes.¹³

The 1995 General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Peace Agreement)¹⁴ brought an end to the three and a half year long conflict and bequeathed Bosnia and Herzegovina with one

⁹ Amnesty International, 'Rape and Sexual Abuse by Armed Forces'.

¹⁰ Some associations of survivors, including Women – Victims of War, argue that the official numbers are grossly underestimated and represent only 20% of the total number of victims, including many who had been killed or are resettled outside of BiH.

¹¹ See Parliamentary Assembly of the Council of Europe, Resolution 1670, 'Sexual violence against women in armed conflict', May 2009, para. 6. A figure of 50,000, originally estimated by the BiH government and mentioned in the Report of the Secretary-General of the UN, 'In depth study on all forms of violence against women', doc. A/61/122/Add.1, July 2006, was later disputed; however, several local associations maintain that the CoE figure is too conservative.

¹² Amnesty International, 'Rape and Sexual Abuse by Armed Forces'.

¹³ Amnesty International, 'Whose Justice?'.

¹⁴ The General Framework Agreement for Peace in Bosnia and Herzegovina, available at <http://www.nato.int/ifor/gfa/gfa-home.htm>.

of the most complex power-sharing arrangements and governance systems in the world.¹⁵ The Dayton Peace Agreement established a new constitutional structure and divided BiH into two semi-autonomous entities: the Federation of BiH (FBiH), predominantly populated by Bosnian Muslims (Bosniaks) and Croats, and the Republika Srpska (RS), with a Serb majority. Brčko District in Northern Bosnia was granted a special status. Under a separate peace agreement, the FBiH was further decentralised into ten cantons.¹⁶



A survivor in her home in Northern Bosnia. For survivors who accessed assistance provided by aid programmes, the support was transformative. © Ziyah Gafić

The peace accord created a complicated multi-tiered system of governance in BiH. Under the Constitution embedded into the Dayton Peace Agreement, BiH state is in charge of security, defense, customs and immigration, fiscal and monetary policy and inter-entity coordination, while the entities have jurisdiction over healthcare, education, agriculture, culture, veterans issues, labour, police and internal affairs. In addition, within FBiH, cantons have a high degree of autonomy on local issues, including healthcare, social assistance and education. Each of the entities, as well as cantons, has a president, parliament, government, police and judiciary.¹⁷ A formal hierarchy between the state and the entities and between the entities and the cantons does not exist, and the absence of a political consensus on major policy issues results in a disharmonised system of laws and solutions that vary from locality to locality. With 18% of the population living below the

¹⁵ During the conflict, an estimated 100,000 people were killed and some 2 million became refugees and internally displaced persons (IDPs), while close to 10,000 persons are still missing.

¹⁶ See Washington Agreement signed in 1994 between BiH authorities, Croatian government and unrecognised Bosnian Croat authorities of the so-called Herzeg Bosna, available at: https://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/washagree_03011994.pdf.

¹⁷ For more detail on the distribution of responsibilities and relationship between the state and entities, see Article III of DPA. For more detail on the structure of the FBiH and the relationship between the entities and cantons, see Washington Agreement and the Constitution of FBiH.

poverty line (2011 est.)¹⁸, a further 26% at risk of poverty¹⁹, and a registered unemployment rate of 46%, BiH is also one of the poorest countries in Europe.

The shortage of resources and a complex and highly decentralised administrative organisation significantly affect the quality and efficiency of governance in BiH and create severe disparities in the ability of citizens to enjoy their social and economic rights equally on the whole territory of the state. Systemic shortcomings 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. Due to the lack of an overarching statewide policy on the quality and availability of key public services and the rights of civilian victims of war, there are significant discrepancies in the laws and the availability of services between the entities. Differences are further exacerbated at the cantonal level, where citizens of FBiH predominantly exercise their rights and access services.

Amnesty International has previously expressed concern that the complex administrative organisation and the dysfunctional system of governance in BiH are key obstacles to the ability of the authorities to provide equal and effective access to justice and reparation for all victims of war crimes of sexual violence.²⁰ This places an even greater responsibility on the authorities in the entities and cantons to agree on and ensure an identical standard of rights and protections for this population and enable them to exercise these rights to the fullest extent regardless of where they reside.

Sanja, a survivor living in Tuzla, has completely lost confidence in public services. After failing in her efforts to secure the prosecution of her abuser, she still has to deal with his presence even though the war ended 22 years ago. Sanja turned to social services for assistance, but ran into a closed door. Sanja, a well-dressed 42-year old, said she was laughed at when she appealed for help. 'They said, "Look at yourself. What are you doing here?! Go home." They simply turned me away because I don't look like their idea of a victim; because I try not to look dead on the outside, as I am on the inside.' In fact, Sanja is one of the rare cases of sexual violence victims whose abuse continues 22 years after the end of the war. A man who had kept her in captivity, raped her, forced her to sleep with other soldiers and threatened to kill her during the war is also the father of her child and continues to visit her on a weekly basis and sexually abuse/rape her. 'My trauma did not end in the war. He still comes to my house once a week and practically rapes me. After all these years, I still can't say no.' Because of his standing in the community and membership in the military, the perpetrator was never charged even though Sanja reported him to the police several times. Her story is one of the complete failure of the system – from police and judicial authorities, who did not pursue the case, to social services, who ignored her cry for help. Until recently, when she was referred to one of the NGOs, Sanja was not aware that she could apply for the status of civilian victim of war, obtain administrative compensation or get psychological support. 'I don't trust anyone any more, especially not the state. They all failed me. I live only for my son. He is the light of my day. As for me... this is not life. This is more like being on a life support machine.'

¹⁸ World Bank, *Bosnia and Herzegovina Country Profile*, available at: <http://data.worldbank.org/country/bosnia-and-herzegovina>, and Statistical Agency of BiH, *Demographics and Social Statistics*, available at: http://www.bhas.ba/index.php?option=com_publicacija&view=publicacija_pregled&ids=1&id=2&n=Tr%C5%BEi%C5%A1te%20rada.

¹⁹ World Bank, 'Poverty and social exclusion in Bosnia and Herzegovina: insight from the 2011 extended household budget survey', January 2011, available at: <http://documents.worldbank.org/curated/en/149881468186564195/Poverty-and-social-exclusion-in-Bosnia-and-Herzegovina-insights-from-the-2011-extended-household-budget-survey>.

²⁰ See 'Whose Justice?', p. 7.

1. ACCESS TO JUSTICE

‘These were all local men. I recognised them and stood witness in court many times. Some were acquitted and some got reduced sentences. Many are walking free today and some are working as officials in the local municipality. I still run into them. It wasn’t easy to return here after everything that I’ve been through and share life with the people who had committed all those crimes.’

Elma, Vlasenica

All victims of gross violations of international human rights law or serious violations of international humanitarian law should have equal access to an effective judicial remedy. Under international law, the state has an obligation to investigate violations effectively, promptly, and thoroughly and impartially and, where appropriate, take action against those allegedly responsible.²¹

In BiH, the prosecution of war crimes, including the cases of conflict-related sexual violence, takes place before 15 different courts and prosecutor’s offices and under different criminal legislation. Proceedings may take place at the Court of BiH at the state level and the level of the entities. These include ten cantonal courts in the FBiH and five district courts in RS. Cases are also tried before the Basic Court in Brčko District. The system is fragmented and, in the absence of a formal hierarchy between the state and entity-level courts, appeals are handled by four different courts: the Appellate Division of the BiH Court, the FBiH Supreme Court, the RS Supreme Court and the Brčko District Appellate Court. The majority of war crimes cases continue to be investigated and prosecuted at the state level, by the BiH Court and BiH Prosecutor’s Office; however, collectively, lower-level courts are handling nearly a half of all the cases involving crimes of sexual violence committed in a time of armed conflict.²²

Despite some recent efforts to harmonise legislation, significant discrepancies persist between different jurisdictions in the laws relating to war crimes, which can result in different legal definitions of the same crime and inconsistency in the penalties imposed. In addition, Amnesty International is concerned that the prosecutions take place in a justice system that has insufficient resources and a huge backlog of unresolved

²¹ Principle 3 (b) of the UN Basic Principles. Also, the obligation derives from the Article 2 (3) of the International Covenant on Cultural and Political Rights (ICCPR) and Article 13 of the European Convention on Human Rights (ECHR)

²² Organisation for Security and Cooperation in Europe (OSCE) Mission in BiH, *Towards Justice for Survivors of Conflict-Related Sexual Violence in Bosnia and Herzegovina: Progress before Courts in BiH between 2014 and 2016*, June 2017, p. 8 (hereinafter: OSCE, *Towards Justice for Survivors*).

cases. It is possible, if not likely, that it will be a decade or longer before the pending cases are closed and those responsible for the crimes brought to justice.

1.1 QUESTIONS ABOUT THE CLASSIFICATION AND SENTENCING OF CRIMES

‘They haven’t found anybody yet. The prosecutors told me that I would need to know who raped me, so they can catch and try them. But how would I know that?!’

Aida, Brčko

In addition to a fragmented legal and institutional framework and issues of conflict and overlap among different jurisdictions, there are significant shortcomings in the criminal law being applied in respect of crimes under international law. In BiH, cases of crimes under international law, including the cases of conflict-related sexual violence, are tried under two different criminal codes: the Criminal Code of BiH adopted in 2003 (BiH Criminal Code) and the 1976 Criminal Code of the former Socialist Federal Republic of Yugoslavia (SFRY Criminal Code), which was the law in force at the time of the conflict. The courts in the entities and Brčko District have applied and continue to apply the SFRY Criminal Code to war crimes cases, while, until recently, the War Crimes Chamber of the Court of BiH had tried the overwhelming majority of cases under the BiH Criminal Code.

Under international law, the crime of conflict-related rape and sexual violence can be classified as a war crime (when committed during an armed conflict), a crime against humanity (when committed as a part of widespread or systematic attack against civilians) or genocide (when committed with the intent to destroy, in whole or in part, a particular group). In respect of crimes committed during the war in BiH, the BiH Criminal Code is the more adequate instrument of the two criminal codes, since it explicitly makes crimes under international law criminal under national law, including crimes against humanity and crimes of sexual violence committed in wartime.²³ The BiH Criminal Code was amended in 2015 to include a definition of crimes of sexual violence as an underlying offence of ‘war crimes against civilians’ and crimes against humanity in line with the international criminal standards and the jurisprudence of international courts and tribunals²⁴ and with the previous recommendations of the UN Committee against Torture (CAT) and Amnesty International.²⁵ The amendments removed the condition of force, i.e., the requirement to prove the perpetration of the crime through the use of force or threat of use of force.²⁶ Instead, the amended law favours the concept of coercive circumstances as elaborated by the jurisprudence of the International Criminal Tribunal for former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR). This was an important change as the inclusion of the condition of force had limited the means by which sexual acts could be declared non-consensual and, until recently, had had a significant adverse effect on the proceedings in cases of sexual violence.

Unlike the generally progressive BiH Criminal Code, the SFRY Criminal Code has serious gaps when applied to crimes under international law. Most notably, it does not criminalise crimes against humanity and does not

²³ The BiH Criminal Code provides an adequate legal qualification in domestic law of crimes which were already criminalised under international law during the 1992-1995 war, in the way that the SFRY Criminal Code does not, which may result in impunity.

²⁴ The amendments brought this section of the BiH Criminal Code into compliance with Article 7 of the Statute of the International Criminal Court (ICC) and with the practice of the International Criminal Tribunal for Former Yugoslavia (ICTY).

²⁵ UN Committee against Torture (CAT) *Concluding Observations from 2011* include a recommendation to BiH to amend the Criminal Code to include a definition of sexual violence in accordance with international standards and jurisprudence related to the prosecution of war crimes of sexual violence and remove the condition of ‘force or threat of immediate attack’ from the present definition. See UN Committee against Torture, *Concluding observations on the combined second to fifth periodic report of Bosnia and Herzegovina*, CAT/C/BiH/CO/2-5, para. 9, 20, January 2011. See also Recommendations in Amnesty International, ‘Whose Justice?’.

²⁶ Law on Changes and Amendments to the Criminal Code of BiH of 19 May 2015, *Official Gazette no. 40/15*. See Articles 9 and 10 on relevant changes to Articles 172 (crimes against humanity) and 173 (war crimes against civilians) defining underlying offences of sexual violence. However, it is important to add that the BiH Criminal Code does not codify rape or other forms of sexual violence as a separate offence, unless they are committed in the context of a widespread or systematic attack against the civilian population or as a war crime.

recognise the mode of liability of command responsibility, in contradiction with international standards. While rape is defined as a war crime, the full array of crimes of sexual violence recognised in international law, including sexual slavery and forced pregnancy, is not defined in the SFRY Criminal Code.²⁷ This has serious consequences for the adjudication of cases involving rape and other war crimes of sexual violence, as many such acts have been committed in the context of widespread attacks against the civilian population and could, therefore, constitute crimes against humanity. These deficiencies in the SFRY Criminal Code make it an unsuitable normative framework to address sexual violence in armed conflicts.²⁸

However, despite these deficiencies, the SFRY Criminal Code continues to be applied by the courts in the entities and Brčko District, and in recent years, increasingly by the Court of BiH as well.²⁹ This has become of even greater concern since the 2013 ruling by the European Court for Human Rights (ECtHR) in the case *Maktouf and Damjanović v. Bosnia and Herzegovina*.³⁰ The ECtHR ruling found that the application of the sentencing provision of the BiH Criminal Code in *Maktouf and Damjanović* constituted a violation of Article 7 of the European Convention of Human Rights (ECHR), which prohibits the retroactive application of criminal law if it is to the disadvantage of the accused. The ruling stated that the court in BiH ought to have used the more lenient sentencing provisions of the SFRY Criminal Code³¹ when sentencing the defendants who were charged with war crimes and received penalties that were within the lower range of punishment foreseen under the BiH Criminal Code.³²

Although the ECtHR ruling did not provide a further view as to whether the sentencing provisions of the BiH Criminal Code, especially those in the higher range, i.e., 15 years or above, are compatible with Article 7, courts in BiH have interpreted it as requiring that the more lenient SFRY Criminal Code be applied to cases of war crimes and genocide.³³ While cases of crimes against humanity, including some cases of wartime sexual violence, have continued to be tried under the BiH Criminal Code, the BiH Constitutional Court's interpretation of ECtHR ruling affected trials and sentencing in all other genocide and war crimes proceedings before Court of BiH. In at least 23 instances, this has led to the reopening of cases with final and binding decisions and a reduction of the sentences handed down to perpetrators of crimes of sexual violence.³⁴

In 2016, the UN Committee on Enforced Disappearances (CED) expressed concern that the BiH Constitutional Court was quashing verdicts following the ruling of the ECtHR without undertaking an assessment of the particular circumstances of each individual case. In 2016, the Committee said it was 'gravely concerned that the reopening of war crimes and genocide cases has led to a drastic reduction of sentences, including for perpetrators of enforced disappearances, and that convicted criminals were released pending retrial, which has resulted in fear, insecurity and re-victimisation of some individuals and a lack of trust in the justice system'.³⁵

Beyond the impact on sentencing practices, in several cases analysed by the Organisation for Security and Cooperation in Europe (OSCE) Mission to BiH, the courts have also interpreted the ECtHR ruling as requiring the re-qualification of acts in order to apply the SFRY Criminal Code.³⁶ Amnesty International considers that the ECtHR ruling addresses only the sentencing practice and therefore does not preclude the courts in BiH

²⁷ Under provisions for war crimes provided by the SFRY Criminal Code of 1976, sexual violence can be prosecuted as torture, inhumane treatment or the causing of great suffering or serious injury to bodily integrity or health. See chapter XVI of the SFRY Criminal Code, entitled 'Criminal Acts against Humanity and International Law'.

²⁸ Amnesty International, *Submission to UN Human Rights Committee*, March 2017 (Index: EUR 63/5554/2017). Also, see 'Whose Justice?', p. 30.

²⁹ While, following the ECtHR ruling, the Court of BiH decided to apply the SFRY Criminal Code to all cases of genocide and war crimes, some cases involving crimes against humanity – which are not covered by the SFRY Criminal Code – continue to be tried under the BiH Criminal Code.

³⁰ *Maktouf & Damjanović v. Bosnia & Herzegovina* (2312/08 and 34179/08), European Court Grand Chamber (2013).

³¹ Article 142 of the SFRY Criminal Code codifies rape only as a crime against the civilian population and foresees a minimal sentence of five years of imprisonment. As a comparison, Article 173 of the BiH Criminal Code foresees a minimum of ten years of imprisonment for the same crime.

³² The principle of non-retroactivity under Article 7 of ECHR prohibits the retrospective application of criminal law where it is to an accused's disadvantage. For more discussion on the effects of the *Maktouf & Damjanović v. Bosnia & Herzegovina* decision on the proceedings, see OSCE Mission to BiH, *Combating Impunity for Conflict-Related Sexual Violence in Bosnia and Herzegovina (Entity Courts, 2004-2014)*, June 2015, p. 17-18.

³³ See OSCE, *Towards Justice for Survivors*, p. 13 and Korner, Joanna, Processing of War Crimes at the State Level in Bosnia and Herzegovina, June 2016, p.29, available at: <http://www.osce.org/mission-to-bosnia-and-herzegovina/247436>.

³⁴ See OSCE Mission, *Towards Justice for Survivors*, p. 13-14. See also Association of NGOs, *Follow up Report of the Implementation by BiH of the Recommendations issued by the UN Committee on Elimination of Discrimination against Women*, July 2015, para. 13.

³⁵ UN Committee on Enforced Disappearances, *Concluding Observations on the report submitted by Bosnia and Herzegovina under article 29, paragraph 1 of the Convention*, October 2016, para. 4.

³⁶ OSCE, *Towards Justice for Survivors*, p. 13. For examples of specific cases, see Ibro Macić, Court of BiH, First Instance Verdict, 17 April 2015, paras.41-48; Josip Tolić, Court of BiH, First Instance Verdict, 20 March 2015, para. 78; Zaim Lalić, Court of BiH, First Instance Verdict, 25 May 2015, paras. 36-43; Bosiljko Marković and Ostoja Marković, Court of BiH, First Instance Verdict, 24 June 2015, paras. 57-60.

from using the definitions of crimes under the BiH Criminal Code. Article 7 of the ECHR and Article 15 of the ICCPR allow for the trial and punishment of any person for any act, which, at the time of its commission, was criminal under international law, even if appropriate domestic legislation was not in force at the time of the commission of the act.³⁷ The view of the courts in BiH that the criminal code in force at the time of the conflict should typically apply has resulted in a situation where some serious crimes under international law, including crimes of sexual violence, are not adequately classified and tried. The courts in BiH should use the BiH Criminal Code for the legal qualification of the conduct as this code more fully criminalises domestically the conduct which was already criminalised under international law at the time when the crimes were committed. The 1976 SFRY Criminal Code does not offer the same level of compatibility with the international law requirements as they were at the time of the commission of the crimes.

1.2 DELAYS IN PROSECUTION OF WAR CRIMES AND BACKLOG OF CASES

‘Most survivors will not live long enough to see justice being done. In a few years, the courts will run out of cases; there won’t be any survivors, perpetrators or witnesses alive to go through the trials.’

Bakira Hasečić, Sarajevo

Cases of wartime sexual violence are typically prosecuted as crimes under international law. Although different courts in BiH have so far completed over 400 war crimes cases³⁸, the overall rate of prosecution remains troublingly slow. The authorities in BiH are currently developing a revised National Strategy for Processing of War Crimes (War Crimes Strategy), which would address some of the challenges to prosecutions and establish fresh deadlines for the completion of cases. The Court of BiH, which represents the highest jurisdiction for war crimes prosecution, failed to meet the targets set in the original Strategy document adopted in 2008.³⁹ The Strategy was seen as an important milestone, affirming BiH’s commitment to ensuring accountability for war crimes. It included concrete plans to equip and organise a judiciary to process war crimes in a manner consistent with international legal standards and practice. It also envisaged the completion of ‘complex’ and high priority cases (i.e., cases that involve command responsibility, multiple victims or show elements of systematic crime), within seven years and other war crime cases within 15 years, and the transfer of cases involving individual responsibility, or so called ‘less

³⁷ Article 7(1) European Convention on Human Rights, Article 15 of International Covenant for Cultural and Political Rights. According to Article 7(1) of the European Convention on Human Rights:

‘1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.’ Article 7(1) of ECHR covers two legal principles: *nullum crimen sine lege* (no crime without law) and *nulla poena sine lege* (no punishment without law), both related to the issue of legality. The first principle asks the question as to whether the conduct was criminal at the time it was committed, while the second asks the question as to whether the punishment imposed to punish the crime was lawful. The case of *Maktouf and Damjanović v. Bosnia and Herzegovina* dealt with the *nulla poena sine lege* principle (sentencing part). It had no bearing on the question as to whether the conduct itself was criminal and therefore whether the 2003 Criminal Code of Bosnia and Herzegovina should be applied to the prosecution of crimes under international law. The jurisprudence of the European Court of Human Rights (see: *Streletz, Kessler and Krenz v. Germany*, Nos. 34044/96, 35532/97 and 44801/98, 22 March 2001 [Grand Chamber], and *Kolk and Kislyiy v. Estonia*, Nos. 23052/04 and 24018/04, 17 January 2006) is very clear and consistent on the fact that the application of domestic criminal legislation subsequent to the commission of crimes under international law does not violate Article 7(1) provided that the conduct was already criminal under international law at the time when it occurred. See also: Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging. Case STL-11-01/I, Adopted 16 February 2011, Special Tribunal for Lebanon, paras. 132-133.

³⁸ This number refers to the cases with final and binding verdicts.

³⁹ See Balkan Insight, ‘Strategija za rad na predmetima ratnih zločina nije ispunjena’, 29 January 2016, available at <http://www.balkaninsight.com/rs/article/bih-strategija-za-rad-na-predmetima-ratnih-zlo%C4%8Dina-nije-ispunjena-01-29-2016>. In its Concluding observations on the third periodic report of BiH, the UN Human Rights Committee expressed concern about the slow pace of prosecuting war crimes and the failure of the courts to meet the targets set out in the original War Crimes Strategy and urged BiH to expedite the proceedings. See UN Human Rights Committee, *Concluding observations on the third periodic report of BiH*, CCPR/C/BiH/CO/3, 13 April, 2017, paras. 13-14.

complex cases' to lower-level courts.⁴⁰ However, at the time of writing, nearly 260 war crimes cases were pending before different courts in BiH, while over 900 cases were still in the pre-investigation stage.⁴¹ At the current rate, it will take decades to clear the existing backlog of cases, threatening to leave the dwindling population of victims without the opportunity to see justice in their lifetime.⁴²

An independent analysis commissioned by the OSCE in 2016 concluded that the progress in the prosecution of war crimes before the BiH Court was beset by many challenges, including the lack of committed leadership, poor management practices and the lack of capacity resulting in poor quality indictments, and continued political interference in the work of the Court and Prosecutor's Office.⁴³ The challenges were further aggravated by the two-year long suspension of the European Union (EU) Instrument for Pre-accession (IPA) funding designed to assist the prosecution of war crimes. The funds were of vital importance for investigations and witness protection support in courts in BiH, but were withheld due to the failure of authorities in BiH to adopt the Judicial Sector Reform Strategy, which was seen by the EU as a major milestone on the country's path to accession. As a result of reduced resources, many investigators and other support staff, including witness protection officers in some courts, were dismissed, leaving some of the core positions vacant for an extended period of time.⁴⁴

The revised War Crimes Strategy should address deficiencies regarding the distribution of caseload between the state and entity courts that slowed down the overall pace of prosecution and set more realistic timelines for the courts that are handling the most complex war crimes cases. At the time of writing, the inter-agency working group for its drafting has held several meetings. At the core of their activities were the revised criteria for the transfer of cases and the measures to address the quality of indictments. In conversations with Amnesty International, both the BiH Ministry of Justice, which is leading the process, and the EU Delegation in BiH/European Union Special Representative (EUSR), expressed hope that the updated Strategy would be adopted in 2017.⁴⁵

Notwithstanding the shortcomings in its implementation and the failure to achieve its original caseload targets, the War Crimes Strategy – and the financial support it has received from the International Community – has led to many qualitative improvements in witness protection and the overall approach of the judiciary to cases of wartime sexual violence. Amnesty International encourages the adoption of the updated strategy and supports the reallocation process, including the transfer of cases from the Court of BiH to courts in the entities and Brčko District, on the condition that the authorities and the International Community in BiH continue robust efforts to improve witness protection support at the lower-level courts and prosecutor's offices. Further transfer of cases of wartime sexual violence from the Court of BiH to the lower-level courts should be contingent on the existence of adequate witness protection infrastructure and staff at these levels. The EU funds represent a lifeline for war crimes prosecutions and should not be conditioned in a manner that would leave these critical functions vulnerable to political disagreements and compromise the level of protection and support provided to witnesses in these cases.

⁴⁰ *BiH National Strategy for Processing War Crimes Cases*, 2008, para. 1.2 (a), available at: http://www.mpr.gov.ba/web_dokumenti/Drzavna%20strategije%20za%20rad%20na%20predmetima%20RZ.pdf (hereinafter: *War Crimes Strategy*).

⁴¹ OSCE, *Towards Justice for Survivors*, p. 10-12.

⁴² For a full study of war crimes prosecution at the state level, see Korner, *Processing of War Crimes at the State level*. In her analysis of the rate of implementation, Korner concludes that, under the current regime and management practices, 'it is highly improbable that there will ever be any real reduction in the war crimes cases, let alone their completion', p. 34. Korner argues that the available resources make it impossible to prosecute all the perpetrators who committed crimes during the three and a half year long war and that the authorities ought to responsibly manage the expectations of the victims and public, see p. 13.

⁴³ Korner, *Processing of War Crimes at the State level*, p.14.

⁴⁴ Korner, *Processing of War Crimes at the State level*, p. 9.

⁴⁵ Interviews with Niko Grubešić, BiH Ministry of Justice, 18 May 2017, Sarajevo, and Interview with EC Delegation in Sarajevo, 27 March, 2017.

1.3 RECENT IMPROVEMENTS AND REMAINING CHALLENGES IN THE PROSECUTION OF CASES OF SEXUAL VIOLENCE

‘Justice is too slow, or it never happens. After the war, I reported the crimes. All the men who did this to me were members of the local police in Brčko and I was able to identify them. But I was told that they were “unavailable” to courts as they now live in Serbia. These courts won’t prosecute them. It seems that there will be no judgment for them in this world.’

Nidžara, Brčko

Despite the overall gloomy picture of criminal justice for war crimes, recent years have seen some advances in prosecuting the crime of sexual violence and rape, not only in terms of the number of tried cases, but also in the overall quality of the proceedings.⁴⁶ Over the years, cases involving sexual violence have become more prevalent and currently represent approximately 30% of all completed war crimes cases. Since 2004, when the War Crimes Chamber of the Court of BiH was established, a total of 123 such cases have been completed and 134 perpetrators convicted of sexual violence crimes.⁴⁷ The years 2015 and 2016 saw the highest completion rates on record, with 20 and 19 completed cases, respectively.⁴⁸ The average conviction rate was 76%; however, it varied from court to court, with a higher number of convictions recorded at the Court of BiH and in the FBiH: 79% and 90%, respectively. In RS, nearly half of all cases ended in acquittals.⁴⁹ While encouraging overall, these numbers still represent less than 1% of the total estimated number of victims of war crimes of sexual violence and a fraction of the reported cases.⁵⁰

Amnesty International has observed notable improvements in several areas of the prosecution of cases of conflict-related sexual violence over the past two years. In interviews with the organisation, the women who recently testified in courts and organisations providing them with legal assistance spoke of significant changes. They especially credited the staff of the BiH Prosecutor’s Office and the Court of BiH with making considerable efforts to ensure that they felt comfortable and safe while giving statements. The women interviewed reported that the prosecutors’ offices and police were increasingly making an effort to engage female investigators to take testimonies, showed more consideration when questioning them and, in some cases, helped organise victims’ transport to courts. ‘Our association has been working with courts and prosecutor’s offices since the very beginning, but there have indeed been improvements over the recent years, especially at the state level,’ Bakira Hasečić of the Women Victims of War association told Amnesty International. This is in significant contrast to the testimonies the organisation documented in 2015, when the victims conveyed troubling accounts of investigators and court officials routinely compromising the identity of protected witnesses, subjecting them to unreasonably difficult and traumatic questioning,

⁴⁶ For a comprehensive study of conflict-related sexual violence proceedings before courts in BiH between 2014 and 2016, see OSCE, *Towards Justice for Survivors*.

⁴⁷ The figures represent cases closed as of June 2017 based on an unofficial estimated count provided by the OSCE Mission in BiH. Email correspondence with OSCE, 29 June 2017.

⁴⁸ In addition, between January and June 2017, the OSCE Mission to BiH indicated that it monitored seven cases against 12 defendants before various courts in BiH. All seven cases were completed with 11 defendants convicted for a total of 52 years of prison in total, and charges were dropped in one case. Email correspondence with OSCE, 29 June 2017.

⁴⁹ All the data in the paragraph was taken from the OSCE, *Towards Justice for Survivors*.

⁵⁰ Statistics on the overall number of complaints do not exist and were never collected by the authorities, and it is difficult to ascertain the full scope of the reported cases. Figures – suggesting over 4,000 reported offenses – as tracked by some associations of survivors are difficult to corroborate.

including about their previous sexual history and their relationship with the alleged perpetrator, and displaying generally insensitive behavior.

In its recent report on the status of the trials of cases of conflict-related sexual violence in BiH, the OSCE Mission in BiH noted that in addition to the increased number of prosecutions of such cases, the judiciary at all levels has made considerable qualitative improvements in their approach to handling these crimes. According to the OSCE, the cases tried over the past two years showed that investigators, prosecutors and judges in such cases have improved their knowledge and understanding of international law and jurisprudence and shown greater respect for special evidentiary rules in sexual violence cases.⁵¹ These rules, which are enshrined in criminal procedure codes at all levels in BiH, prohibit raising the question of consent in cases of war crimes, genocide and crimes against humanity, questioning victims of sexual violence about any sexual experiences prior to the commission of the criminal offence and make inadmissible any evidence offered to show the victim's involvement in previous sexual experience or behavior.⁵² Similar to OSCE, TRIAL International, which provides legal assistance to victims, has made observations about general improvements in the prosecution of cases of sexual violence.⁵³

While acknowledging these important advances, Amnesty International remains concerned about the overall slow progress of prosecutions, as well as the arbitrary and inconsistent sentencing practices that could be seen as perpetuating impunity for war crimes and that further undermine confidence in the judicial system among victims.

Many reported cases of wartime sexual violence never end up being prosecuted as such. All 25 women interviewed by Amnesty International in the course of the research reported the crimes, gave statements to investigators or testified in courts, but in only one instance was the perpetrator tried and convicted for a crime of sexual violence, though some were convicted of other offences, such as killings and enforced disappearances. The prosecution of such cases is complicated by the multitude of obstacles, including the lack of availability of suspects, physical evidence and witnesses, and experienced investigators.⁵⁴ Other challenges that affect the overall prosecution of war crimes, such as the lack of resources and the absence of an integrated and effective judicial system, are also applicable to the cases of conflict-related sexual violence. These challenges and the disappointingly low rate of prosecution cause widespread mistrust in the judicial institutions. Amra, a victim from Tuzla, was interviewed by police several times, but an official investigation into the crime was never launched. 'I was told that my case should have been completed by 2015, but, in reality, it has not even been initiated. I complained about the lack of action to the prosecutor's office, but never received a response. And the men who did this to me are still in Brčko and free. I can see their posts and photos on Facebook.'

Associations of survivors and NGOs have also expressed concern about the high acquittal rates in some courts, resulting from the application of standard, rather than special, evidentiary rules, which should be applied in cases of conflict-related sexual violence. For example, East Sarajevo court covers 14 municipalities and handles a significant number of cases. Yet, at this court, a disproportionate number of war crimes cases and cases of wartime rape tend to end in acquittals. 'In our experience with this court, the vast majority of the alleged perpetrators walk away free from the trial. Witnesses are usually questioned and cross-examined and then told that they did not provide testimony that was sufficiently convincing,' Bakira Hasečić, the president of Women Victims of War and a victim herself, told Amnesty International. A similar situation is observed in Bijeljina District Court, which does not seem to respect special evidentiary rules and still relies on a definition of rape, which does not acknowledge the inherent existence of coercive circumstances present in any conflict-related sexual violence and includes the condition of use of force discussed above.⁵⁵ 'I identified the men who raped me and testified several times in court. Other women refused to testify. I was questioned and finally the case was dismissed on account of insufficient evidence. I was told that my testimony was not enough to convict any of them. After all that questioning, I felt embarrassed and humiliated,' Fahra from Bijeljina told Amnesty International.

⁵¹ OSCE, *Towards Justice for Survivors*, p. 18.

⁵² Article 279 of the FBiH Criminal Procedure Code, Article 279 of the RS Criminal Procedure Code, Article 264 of the Brčko District Criminal Procedure Code.

⁵³ Email correspondence with TRIAL Int., 29 June 2017.

⁵⁴ OSCE, *Combating Impunity (Entity Courts)*, p. 11.

⁵⁵ Email correspondence with TRIAL Int., 15 June 2017.

1.4 REDUCED SENTENCES FOR PERPETRATORS OF WAR CRIMES OF SEXUAL VIOLENCE

The arbitrary and inconsistent application of mitigating and aggravating factors in sentencing is another problem. Both the BiH Criminal Code and SFRY Criminal Code provide for a possibility to pronounce sentences that are below the mandatory statutory minimum in cases where there are ‘highly extenuating circumstances indicating that lesser punishment may achieve the purpose of criminal punishment’.⁵⁶ Associations of survivors and NGOs report that the courts routinely apply mitigating factors and express dismay at the trend, which they see as promoting impunity for sexual crimes. According to an analysis conducted by NGOs in 2015, in nearly two thirds of the verdicts, convicted perpetrators were issued reduced three- to five-year sentences for crimes of sexual violence.⁵⁷ In its 2017 report, the OSCE also notes the arbitrary application of mitigating and aggravating circumstances when determining sentences in cases of sexual violence, where the defendant’s ‘good behavior’ or ‘family status’ have had a significant impact on the sentence handed down.⁵⁸ According to the OSCE, the courts applied reduced sentences arbitrarily and without detailing how in each individual case the considered mitigating factors met the conditions under applicable codes.⁵⁹ As associations of survivors note, ‘many victims of rape and other forms of sexual violence during the war perceive these low sentences as an additional form of frustration. They feel that their suffering is neglected, especially considering the extraordinary obstacles they have to face to come forward and take part in the proceedings.’⁶⁰

Finally, Amnesty International notes a related concern about the practice of sentence conversion in the cases of crimes under international law. Criminal codes at all four levels provide for the possibility to convert prison sentences into fines upon petition of the convicted person. At the level of BiH and in the FBiH, a prison sentence of 12 months or less is automatically converted to a fine, while in Brčko District and RS, the courts have discretion in deciding whether to grant the substitution.⁶¹ In RS, the conversion applies only to sentences of six months or less, rendering the practice irrelevant for war crimes cases.⁶² While the generally difficult economic situation prevents wider use of this option by the convicted perpetrators, OSCE has observed at least two recent instances where sentences that were already reduced as a result of the application of mitigating circumstances were additionally converted to fines in sexual violence cases.⁶³

Two cases before the Cantonal Court in Bihac highlight dilemmas about the combined use of plea bargain agreements and sentence conversion in cases involving crimes under international law. They concern the two perpetrators who were indicted on charges of inhuman treatment of civilians and rape and attempted rape of two minor girls. In the cases *Beganović* and *Coralčić*, the perpetrators admitted guilt and signed plea bargain agreements with the prosecutor providing for one year of imprisonment and the payment of 50,000 BAM (25,000 EUR) restitution to the victim. Beganović’s and Coralčić’s subsequent petitions to convert their one-year prison sentences to a fine were approved by the Bihac Cantonal Court and the two did not serve their sentences. According to OSCE, it was unclear if the victims were informed about the possibility of the agreed sentences being converted to a fine.⁶⁴ ‘Basically, after raping and attempting to rape two minor girls during the war, the perpetrators – who in the meantime resettled abroad and accumulated some wealth – were in a position to ‘buy’ their way out of prison sentences. Plea bargains can have various benefits, but they are certainly not meant to be a tool for perpetrators to evade justice and for involved actors to compromise sanctioning purposes. Alike, compensation is important, but it cannot be a substitute for servicing criminal justice by abusing the weak social and economic situation of the victims,’ Adrijana Hanušić – Bećirović of TRIAL Int. told Amnesty International.⁶⁵ Legal scholars and practitioners in BiH similarly question whether the practice of allowing the conversion of sentences for crimes committed under international law serves the purpose of the punishment and whether serious crimes and crimes under international law should be exempt from the provisions on the conversion.⁶⁶ ‘I find it disgusting that someone

⁵⁶ Art. 49 of the BiH Criminal Code, Art. 42 of the SFRY Criminal Code.

⁵⁷ Association of NGOs, “Follow-up Report to CEDAW”, paras. 11-13.

⁵⁸ OSCE, *Towards Justice for Survivors*, p. 63-64.

⁵⁹ OSCE, *Towards Justice for Survivors*, p. 64.

⁶⁰ Association of NGOs, “Follow-up Report to CEDAW”, para. 12.

⁶¹ Art. 42 (a) of the BiH Criminal Code, Art. 43 (a) of the Federation BiH Criminal Code, Art. 43 (a) of the Brčko District Criminal Code, Art. 33(2) of the RS Criminal Code. The codes prescribe a fine of 100 BAM (50 EUR) per day of prison sentence.

⁶² Art 35 (2)-(3) of the RS Criminal Code.

⁶³ OSCE, *Towards Justice for Survivors*, p. 72.

⁶⁴ *Ibid.*, p. 57.

⁶⁵ Email correspondence with TRIAL Int., 29 June 2017.

⁶⁶ Balkan Insight, *Bosnian War Crimes Convicts Pay to Stay Free*, 10 August 2016, available at: <http://www.balkaninsight.com/en/article/bosnian-war-crimes-convicts-pay-to-stay-free-08-09-2016>.

can pay for a war crime. It is a mockery of justice. War crimes themselves are grave, irrespective of the duration of the sentence, because sentences can be reduced for a thousand mitigating circumstances, but it is still a war crime, not a speed-limit violation,' said Bojan Stević, the president of the District Court in Trebinje.⁶⁷

Amnesty International considers that the practice whereby those found guilty of crimes under international law can pay their way out of imprisonment and by doing so avoid punishment in accordance with international law perpetuates the impunity and further undermines survivors' trust in the criminal justice system. Imposing punishment for crimes against humanity or war crimes at the level envisaged by law for minor offences (such as fines or prison sentences below 12 months) in cases in which individuals were duly convicted for crimes under international law is tantamount to effectively granting them amnesty, which is prohibited under international law. The sentences in these cases must reflect the seriousness and gravity of the crime committed.⁶⁸ Amnesty International urges the authorities in BiH, FBiH and Brčko District to amend applicable criminal codes to exempt crimes under international law from the provisions on conversion of sentences to fines.

'It seems that human rights apply only to the perpetrators, but not to victims. While we have to rely on free legal assistance and NGOs, the perpetrators are given two professional attorneys, have their court fees covered and then receive reduced sentences. Each trial costs about 160,000 BAM (70,000 EUR). Most of these costs go to the defense. Meanwhile, the courts are reluctant to cover travel costs of the witnesses or provide steady psychological support and protection to the victims who testify.'

Meliha Merdžić, Women Victims of War, Sarajevo

1.5 THE NEED TO STRENGTHEN WITNESS PROTECTION AND WITNESS SUPPORT

'I have been interviewed by prosecutors from different cantons in the Federation BiH and SIPA [Bosnian State Investigation and Protection Agency] at least four times in the past. Nobody supported me to help give a testimony.'

Esma, Brčko

In criminal cases of conflict-related rape and sexual violence, the testimony of victims is critical to the outcome in such cases, as other evidence is often not available. As a part of its obligation to provide victims with an effective remedy, states have an obligation to take measures to ensure victims' safety, physical and psychological well-being and privacy and avoid their re-traumatisation in the course of legal and administrative proceedings.⁶⁹ While the provision of witness protection and witness support in BiH has been significantly strengthened over the past years, the remaining deficiencies in the system pose serious challenges to effective prosecution and continue to prevent many victims from testifying in courts.

The BiH Law on Protection of Witnesses under Threat and Vulnerable Witnesses and the BiH Law on Witness Protection Programme provide procedural safeguards and measures of physical protection for witnesses in criminal proceedings.⁷⁰ However, the two laws apply only to criminal proceedings before the Court of BiH, while the courts in the entities apply their own witness protection legislation, which is less extensive.⁷¹ With the increase of war crimes cases prosecuted at these courts in line with the War Crimes

⁶⁷ As quoted in Balkan Insight, *Bosnian War Crimes Convicts Pay to Stay Free*.

⁶⁸ For example, see Amnesty International, 'Second report on crimes against humanity' to 68th session of the International Law Commission, May-June and July-Aug 2016, para. 83.

⁶⁹ Basic Principles, Principle 10.

⁷⁰ BiH Law on Witness Protection Programme, BiH Official Gazette No. 29/04, BiH Law on Protection of Witnesses Under Threat and Vulnerable Witnesses, BiH Official Gazette, 13/05, 53/07, 97/07, and 37/09.

⁷¹ The entities have their own Laws on Protection of Witnesses Under Threat and Vulnerable Witnesses, but lack the legislation on witness protection programmes, which provide institutional safeguards, including measures of physical protection, including resettlement, and identity change.

Strategy, until very recently, witnesses used to report frequent cases of intimidation and harassment during proceedings, but also inadequate provision of psychological support.

Research conducted by Amnesty International shows, however, that the incidence of such cases has decreased in recent years. This is largely due to the efforts to expand witness protection standards and support beyond the Court of BiH in order to facilitate the transfer to war crimes cases to local-level courts. Under the War Crimes Strategy, and with the financial and technical support of international donors, including the EU, OSCE, United Nations Development Programme (UNDP) and bilateral embassies, there was a push to establish an effective countrywide witness support network. This included the establishment of physical infrastructure, advanced technical capabilities in court rooms, the hiring of witness protection staff, training of staff and the provision of psycho-social assistance to witnesses before, during and after the trials.



A survivor in her home in Eastern Bosnia. Survivors of sexual violence continue to face strong social stigma. © Ziyah Gafic

Under the Strategy, the majority of courts conducting war crimes trials were fitted with separate courtrooms and an antechamber.⁷² In addition, by 2016, all 15 courts that handle war crimes cases had the technical capabilities to enable confidentiality through audio and video distortion during testimonies, and were fitted with video conferencing systems to enable witnesses to provide testimonies via video link, which reduced the need for travel and associated costs, but also enabled many witnesses living abroad and in remote areas to testify.⁷³ At the time of writing, the required physical infrastructure was in place in nearly all courts and prosecutor's offices dealing with war crimes, and witnesses in sensitive cases were increasingly offered the possibility to testify from separate rooms or via audio and video link.⁷⁴

⁷² While a majority of courts included separate chambers, in some cases, the victims and the defendant would be asked to appear before court at the same time and would encounter each other at the building entrance or the waiting rooms. Such incidents, as widely reported by TRIAL Int. and MEDICA Zenica, demonstrate the need for a more thoughtful practice that would ensure that witnesses under protection are invited for hearings at separate times.

⁷³ UN Committee against Torture, CAT/C/BiH/6, *Consideration of reports submitted by State parties under Article 19 of the Convention*, State party report, 17 May 2016, paras. 205-211.

⁷⁴ See OSCE, *Towards Justice for Survivors*, p. 74-76.

In addition to strengthened technical and infrastructure capacities, approximately two thirds of the courts and prosecutors' offices currently employ dedicated witness protection officers who assist witnesses during the investigation and trial and provide required psychological support. Associations and legal practitioners interviewed by Amnesty International say that, in some jurisdictions, the improvement is significant with special facilities, professional care and attention provided to the witnesses in the course of proceedings.⁷⁵

Under the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses, local Social Welfare Centres were required to provide psychosocial support to witnesses. However, to date, these Centres remain ill-equipped to provide such assistance. Instead, with EU assistance, a network of NGOs, consisting of Medica Zenica, Vive Žene, Udružene Žene and Agency for Cooperation, Education and Development (ACED), serves as an important source of support for the victims. The associations have signed protocols with local authorities to set up psychological and social support mechanisms for witnesses in cases of conflict-related sexual violence. Today, 15 such protocols have been agreed, covering the entire territory of BiH and enabling the NGOs to provide perhaps the most tangible support to the survivors, including helping them overcome psychological trauma, organizing referrals to medical and social services and legal aid and acting as a liaison between survivors and prosecutors' offices. In addition to providing support to the victims, these organisations train authorities and others who come in contact with survivors in order to imbue the services with a trauma- and gender-sensitive approach to dealing with vulnerable persons.

These improvements, physical and procedural, have dramatically reduced the instances of victims of rape having to wait in the same room together with the accused, having their identity compromised in the course of the proceedings or being subjected to verbal insults by the accused or their lawyers, all of which were documented by Amnesty International and other organisations in the past.⁷⁶

Despite the overall improvement, the implementation of the programme has not been without challenges. Associations of survivors expressed concern about the limited nature of witness support, which does not extend beyond the trial, when many victims experience threats or require psychological assistance. 'These programmes indeed provide a great deal of support to the witnesses, but this support is available only for the duration of the proceedings. Once you leave the court, you're nobody's business. And typically, this is when the threats start and the witness starts experiencing the effects of trauma triggered by her appearance in the court,' Bakira Hasečić of Women Victims of War told Amnesty International. Witnesses' protection and support should be provided at three different stages: during the pre-trial investigation, at trial and after it. The absence of a comprehensive witness protection support was also recognised by the UN Committee on Enforced Disappearance (CED), which in 2016 urged the authorities to provide 'an adequate and continuous psychological support to victims and witnesses before, during and after war crimes trials'.⁷⁷

NGOs also report varied levels of cooperation by the authorities. For example, in RS, with the exception of Banja Luka City Police, RS Police have not been participating in the training sessions organised by NGOs, although by the nature of their job, they tend to be in frequent contact with the victims.⁷⁸

Finally, the already mentioned suspension of EU IPA funding caused considerable disruption in the overall functioning of witness protection departments in courts and prosecutors' offices, which rely heavily on this funding. Due to the crisis, many experienced staff had to be laid off, breaking the continuity of support and leaving the departments without qualified personnel. Even at the time of writing, a number of courts and prosecutors' offices did not have a dedicated witness support officer.⁷⁹ The funding crisis showed the tenuous status of these key support services, and emphasised the need for authorities in BiH to protect the achievements made thus far and ensure more reliable financing of witness protection programmes. Recognizing that significant financial and other assistance to these programmes is externally funded, primarily through EU and the embassies of the UK and USA, it is critical that the International Community continues prioritizing and supporting this effort.

Witness protection and support have a tremendous effect on the willingness and ability of witnesses to testify, and the lack of consistent and reliable support provided to witnesses before, during and after trials remains a significant barrier to access to justice to many survivors.

⁷⁵ Interview with Women to Women association, 8 November 2016, Sarajevo.

⁷⁶ Amnesty International, 'Whose Justice?', p. 24. Similar instances were reported to Amnesty International by lawyer Nedžla Šehić, November 2016, Sarajevo.

⁷⁷ UN Committee on Enforced Disappearances, *Concluding observations on the report submitted by BiH under article 29, para. 1, of the Convention on Enforced Disappearances*, para. 24 (c).

⁷⁸ Interview with Aleksandra Petrić, United Women association, Banja Luka, 29 March 2017.

⁷⁹ See OSCE, *Towards Justice for Survivors*, p. 80. For example, five local courts and five prosecutors' offices across the country lacked such staff.

2. REPARATIONS

Under international law, all victims of war crimes, including survivors of rape and sexual violence, have a right to remedy and reparation from the state.⁸⁰ Remedies must be proportional to the gravity of the violation and effective in law and in practice. This obligation is also enshrined in the domestic law of BiH.⁸¹

Reparation should include measures to alleviate the harm suffered by the victims, help them rebuild their lives and reintegrate in society. The five recognised forms of reparation include compensation, rehabilitation, restitution, satisfaction and guarantees of non-repetition. The aim of these measures is to 'as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed'.⁸² While in cases where victims suffered serious crime it is impossible to restore the situation which existed before the violation occurred, the obligation of the state to address the suffering of the victims nevertheless remains.

The rights of survivors of conflict-related sexual violence and the obligations of the states were reaffirmed in the so-called Nairobi Declaration, developed by an international coalition of women's organisations, activists and survivors. The Declaration provided a set of principles on the right to reparation and recommended a comprehensive and long-term approach to address the gravity of the crimes suffered by women in conflict. 'In the case of victims of sexual violence and other gender-based crimes, governments should take into account the multi-dimensional and long-term consequences of these crimes to women and girls, their families and their communities, requiring specialised, integrated, and multidisciplinary approaches.'⁸³

Properly tailored reparation can transform survivors' lives. In the case of sexual and gender-based crimes, transformative reparation measures 'should aspire, to the extent possible, to subvert, instead of reinforce, pre-existing structural inequality that may be at the root causes of the violence', including violence that women in particular experienced before, during and after the conflict.⁸⁴ Sexual violence often results from and perpetuates gender stereotypes, inequalities and discrimination that already exist in society, and the reparation measures, in that case, should strive to trigger positive social changes and create conditions that enhance the economic empowerment and autonomy of the women survivors.

Under international law, the primary responsibility for providing reparation rests with the states. In circumstances where crimes were committed by agents of other states or non-state actors, the state has an obligation to ensure that victims can claim compensation and obtain redress from those responsible. In the event that the parties liable for the harm suffered are unable or unwilling to meet their obligation, the state should provide reparation to survivors and seek to reclaim the costs from those responsible.⁸⁵

⁸⁰ UN Basic Principles, Principle 3 (d).

⁸¹ Dayton Peace Agreement, Annex 6: Agreement on Human Rights. Based on Annex 6 of the Dayton Peace Agreement, the European Convention on Human Rights and its Protocols, the International Covenant on Civil and Political Rights, and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment are directly applicable in BiH, and so is the right to a remedy enshrined in them.

⁸² *Germany v. Poland* (Chorzow Factory Case), Permanent Court of Arbitration (1928), p. 47.

⁸³ Article 3(e) of the *Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation*, March 2007.

⁸⁴ Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo, *Reparations to women who have been subjected to violence*, 2010, para. 31, available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/14/22.

⁸⁵ UN Basic Principles, paras. 15 and 16. See also United Nations 'Guidance note of the Secretary-General: Reparations for Conflict-related sexual violence', June 2014, p. 4 (hereinafter: UN Guidelines on Reparations). Concerning the issue of reparations, in the years following the end of the war, authorities in BiH had suggested that the reparation could be provided by the government of Serbia should the International Court of Justice (ICJ) rule in favor of the BiH claim that Serbia had committed genocide against BiH during the war. However, hopes of this were dispelled in 2007 when the court ruled that Serbia was not responsible for the genocide in BiH. The ICJ verdict stayed silent on the issue of compensation.

BiH lacks a comprehensive statewide rights-based framework for redress for civilian victims of war, including survivors of wartime sexual violence. Despite several efforts to do so, the authorities failed to adopt key policy and legal documents that sought to put in place a system to address the rights of this group in a manner consistent with international standard and practice. In 2012 and 2013, the BiH Ministry of Human Rights and Refugees and the BiH Ministry of Justice, with the assistance of the International Community, launched an extensive statewide programme to improve the status of civilian victims of war. The programme consisted of the Draft National Strategy for Transitional Justice, a Programme for Survivors of Conflict-related Sexual Violence and the Draft BiH Law on Protection of Victims of Torture. Collectively, the documents were designed to provide a framework for non-judicial forms of justice, including a sustainable platform to establish facts, provide redress to the victims, protect collective memory and restore trust in institutions of governance. The Draft Law on Protection of Victims of Torture⁸⁶ was meant to enable persons who were subjected to torture and ill-treatment during the war to seek and obtain special status and enjoy a specific set of rights. The three documents presented the most substantial and meaningful effort by BiH authorities to recognise the suffering of the victims and provide them with support to rebuild their lives.

However, the above programme never gained sufficient political support for adoption at the state level and failed before entering the formal adoption procedure. In the absence of a formal reparations scheme which would have been provided by the above framework, survivors today have to rely on a complex array of existing social allowances, as well as individual proceedings, in criminal and civil courts, in order to obtain some form of reparation. Amnesty International considers that the adoption of the three documents is needed to address the rights of victims systematically and across the entire territory of BiH and to eliminate the discrimination based on residence that still prevents many victims from accessing their rights.

2.1 FAILURE TO ADOPT DRAFT TRANSITIONAL JUSTICE STRATEGY

The Draft National Strategy for Transitional Justice was meant to provide a comprehensive platform to provide truth and justice and ensure effective institutional access to reparations and other forms of support for civilian victims of war, including survivors of sexual violence. The BiH Ministry of Human Rights and Refugees and BiH Ministry of Justice prepared the draft document in 2012 after broad consultations with civil society. However, at that time, the RS authorities expressed reservations about the text and the Draft Strategy was never sent into the procedure. RS Ministry of Labor and Veterans' Affairs officials told Amnesty International that the solutions proposed in the document were too far-reaching and were threatening the constitutional competencies of the entities. 'A number of provisions were suggestive of transfer of competencies from the entities to the state and our members in the working group clearly stated that such solutions could not be supported,' said Radojka Kela, head of the Legal Department of the RS Ministry of Labor and Veterans' Affairs.⁸⁷ She also explained that the Strategy required a significant commitment in resources, which RS could not make at the time.

Although the document has been tucked away in government drawers for years, the EU Delegation/EUSR in BiH told Amnesty International that the European Commission was interested in reinvigorating the process in line with the EU Council Conclusion on Transitional Justice⁸⁸ adopted in November 2015.⁸⁹ The Conclusion provides a political and normative framework for transitional justice, even in the absence of the formal accession talks between BiH and EU. The EU Delegation/EUSR in BiH is collaborating with the BiH Ministry of Justice and the BiH Ministry of Human Rights and Refugees on revising the existing strategy, which is

⁸⁶ Although the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) does not explicitly refer to rape and sexual violence in its definition of torture under Article 1, rape has been recognised as a form of torture through a number of rulings of international courts. In the light of the frequent occurrences of rape and sexual violence during the wars in former Yugoslavia and Rwanda, both the International Criminal Tribunal for Former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) have ruled that sexual violence can constitute torture, persecution, enslavements, and inhumane acts as crimes against humanity. Furthermore, in *Aydin v. Turkey* (57/1996/676/866), 2006, ECtHR ruled that rape may constitute torture under the Art. 3 of ECHR. Finally, the UN Committee against Torture published two decisions that include statements that rape can amount to torture under Art. 1 of the Convention against Torture, including in *C.T. and K.M v. Sweden* (279/2005), CAT/C/37/D/279/2005 (2007), and *V.L. v. Switzerland* (262/2005), CAT/C/37/D/262/2005 (2007).

⁸⁷ Interview with Radojka Kela, RS Ministry of Labor and Veterans' Affairs, 29 March 2017, Banja Luka.

⁸⁸ European Union, *Council Conclusion on Transitional Justice*, 2015, available at: <http://data.consilium.europa.eu/doc/document/ST-13576-2015-INIT/en/pdf>.

⁸⁹ Interview with, European Commission Delegation/EUSR in BiH, 27 March 2017, Sarajevo. A key element of the EU Council Conclusion on Transitional Justice is the option of informal and incremental change in cases where local environment is not sufficiently enabling or willing to support far-reaching comprehensive reforms. 'In contexts where there is no genuine political will to move forward with meaningful transitional justice processes, informal initiatives developed and implemented at the grass roots level can provide impetus to the transitional justice agenda and combat impunity... or work alongside formal mechanisms to strengthen their political and societal impact.'

meant to include solutions that are viable in the current political context and would provide tangible benefits for the survivors: 'Our goal is to create a document that is in line with international standards and the Council Conclusion and includes solutions that would directly benefit survivors.'⁹⁰ The BiH Ministry of Justice also expressed its commitment to develop a document that has the agreement of both entities and would be operational.⁹¹ Amnesty International encourages the authorities and International Community to continue their efforts on the development of a Transitional Justice Strategy that would ensure the institutional recognition of victims and provide systemic and effective measures of redress, while having the necessary political commitment to be implemented.

2.2 FAILURE TO ADOPT PROGRAMME FOR VICTIMS OF SEXUAL VIOLENCE IN CONFLICT

The aim of the Programme for Victims of Sexual Violence in Conflict, which was jointly initiated by the BiH Ministry of Human Rights and Refugees and the UNFPA, was to ensure an inclusive and systemic approach to improving the lives of the victims. The programme consisted of four key elements: (i) the harmonisation of legal framework with international standards, (ii) access to free legal aid and adequate protective measures for victim-witnesses at the war crimes proceedings, (iii) strengthening capacities of service providers, and (iv) building partnerships between governmental and non-governmental sectors.⁹² 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 defined the basis for realizing survivors' rights to social welfare and healthcare at the local level and provided concrete measures for their economic empowerment.

Despite being finalised in 2012, the Programme for Victims of Sexual Violence in Conflict was never adopted. Similar to the discussions on the Draft Strategy for Transitional Justice, RS authorities expressed concerns about the strategic goals of the Programme and failed to provide consent for formal submission of the document to the BiH Council of Ministers. In the absence of a structured multi-sectoral approach to supporting survivors, which was planned under the Programme, UN agencies in BiH are currently filling the void and implementing several of the Programme's segments, including those related to witness support, psychosocial assistance, and empowerments, hoping to provide models for future state-managed projects.⁹³ However, there are no indications that the authorities have the resources or long-term plans for taking over these programmes. With this in mind, it is critically important that the International Community in BiH continues providing robust financial and other support for the implementation of individual aspects of the Programme through UN bodies and local NGOs. Without this assistance, victims would be left without critical services, such as legal aid, psychological and social support or small-scale income-generating schemes that many of them depend on. In parallel, the authorities in BiH must remove existing barriers to access and put in place workable policy and legal solutions at an institutional level to ensure that this assistance is available to and reaches a greater number of victims.

2.3 DISCREPANCIES IN THE LEGISLATION AND THE RIGHTS OF VICTIMS OF WARTIME SEXUAL VIOLENCE

The adoption of a framework law on the protection of victims of torture at the state level is an outstanding obligation of BiH under the UN Convention against Torture.⁹⁴ Such a law should define criteria for obtaining the status of the victim of wartime torture, including victims of conflict-related sexual violence, and provide a set of specific rights and entitlements that are guaranteed to victims on the entire territory of BiH. While the entities are responsible for the provision of social support services, state-level legislation, which includes a set of overarching principles and prescribes specific rights to the recognised victims, would ensure equality of treatment of victims regardless of their place of residence or ethnicity and provide guarantees for appropriate medical and psychological care. In the absence of such legislation, survivors continue to

⁹⁰ EU, *Council Conclusion on Transitional Justice*.

⁹¹ Interview with Niko Grubešić, BiH Ministry of Justice, 18 May 2017, Sarajevo.

⁹² UN Population Fund, Bosnia and Herzegovina, 'Combating sexual violence in conflict', 2012, available at <http://ba.unfpa.org/publications/combating-sexual-violence-conflict>.

⁹³ Interview with UN Joint Programme, 8 November 2016 and 24 March 2017, Sarajevo.

⁹⁴ See UN Committee against Torture, *Concluding observations on the combined second to fifth periodic report of Bosnia and Herzegovina*, CAT/C/BiH/CO/2-5, para. 18.

exercise their rights at the lower levels, i.e., in the entities and in the Brčko District, facing discrimination and persistent barriers to access, as well as varied levels of support and entitlements. Compounded by strong social stigma, these challenges discourage the majority of women from coming forward and prevent many of those who do from obtaining the status of civilian victim of war and torture in order to receive redress and often badly needed medical, psychosocial and other support.

ABSENCE OF STATEWIDE LEGISLATION GUARANTEEING THE RIGHT TO REPARATION

The three previous attempts to pass state-level legislation on protection of victims of torture were unsuccessful, with the proposed drafts failing to obtain the required political support. Apart from the long-standing political deadlock that afflicts all initiatives at the state level, representatives from RS are not participating in the latest efforts of the BiH Ministry of Human Rights and Refugees to develop a BiH-wide draft law through an inter-ministerial working group.⁹⁵ Without entity representatives in the working group, it is unlikely that this new attempt will have the necessary political support for any draft law to be passed and implemented in future.

In discussions with Amnesty International, the RS Ministry of Labour and Veterans' Affairs confirmed that the RS Government had serious reservations about the constitutional basis of the previous iterations of the bill. 'There was no political agreement on the proposed solutions, some of which clearly interfered with the constitutional order and competencies of the entities,' the RS Ministry of Labor and Veterans' Affairs told Amnesty International⁹⁶. The provision of social and welfare benefits is the competency of the entity government in RS, or entity and cantonal governments in the FBiH, as is the budgetary responsibility for their payment.

International organisations and NGOs in BiH broadly agree that the adoption of a far-reaching state law on the protection of victims of torture would indeed be challenging in the current political climate. Such a law would require a degree of political consensus that would be difficult to achieve given that the RS authorities are increasingly refusing to participate in state-level initiatives. For this reason, any new attempt to produce an operational law would have to be mindful of the constitutional competencies and, at the state level, provide only a framework for protection of the rights of the victims of torture. The law would need to include an internationally recognised definition of torture, explicitly recognise all conflict-related sexual violence as a form of torture, provide unified criteria for obtaining the status of the victim of torture and list the specific rights that are guaranteed on the entire territory of BiH. A framework law that lists key principles and sets minimum acceptable criteria for reparations in compliance with international law would serve as a model for legislation at the level of entities and Brčko District.

In the meantime, efforts should continue to improve the existing legal frameworks and services in the FBiH, RS and Brčko District, and ensure that they are in compliance with international law and practice and provide equal access to the survivors. The current situation whereby the rights of victims of torture are regulated at the entity level and the level of Brčko District in a disconnected and unharmonised way is inherently discriminatory, with civilian victims of war's status and access to social benefits being dependent on their place of residence, rather than universally guaranteed by the state.

Such circumstances discourage many survivors from coming forward and force others who are desperate for assistance to engage in administrative acrobatics to obtain the status. Selma, a survivor from RS who Amnesty International interviewed in a village near Prijedor where she lives, chose to apply for the status of civilian victim of war in the FBiH, as she – like other survivors living in RS – is denied status in her home entity because of the overly restrictive legislation that does not recognise victims of wartime sexual violence. Selma has had to make a nearly 200 km journey from her village to Zenica or Tuzla and to set up a fake address in the FBiH to be able to access services there. She suffers from serious medical and psychological consequences of the sexual violence she was subjected to during the war and requires continued medical care. For her, the only way to access these services is by bypassing a system that discriminates against her on the basis of her current place of residence.

Selma is not alone. A number of survivors who live in RS or Brčko District interviewed by Amnesty International reported registering their residence in the FBiH in order to qualify for the status and monthly allowance. For many of them, the allowance is often their only source of income. But it comes at a high cost. Once registered in FBiH, these women lose the ability to use health services in the place of their physical

⁹⁵ Interviews with Saliha Djuderija, BiH Ministry of Human Rights and Refugees, 7 November 2016, Sarajevo and a follow-up telephone conversation on 18 May 2017.

⁹⁶ Interview with Radojka Kela, RS Ministry of Labor and Veteran's Affairs, 29 March 2017, Banja Luka.

residence in RS. Elma, a survivor from the small village of Vlasenica in Eastern Bosnia, says she is grateful for the allowance, as it helps her and her family, including her husband and a teenage son, to survive. However, for Elma, travelling to Tuzla in order to undergo regular check-ups and renew her prescriptions is completely unaffordable. With the exception of emergency assistance, she is not entitled to any other medical care in RS. She suffers from a series of ailments, including anxiety and a painful spinal injury which is a consequence of a beating to which she was subjected while in a camp. Yet, she is forced to choose between accessible medical care and desperately needed subsistence.

While associations of survivors generally discourage their members from setting up false residencies in places where they can obtain status, for most victims living in RS, this may be the only way to get medical support or some degree of financial compensation. 'We are fully aware that this means that we are cheating the system, but the system is also cheating us,' the president of one of the associations told Amnesty International.

EXISTING PROTECTIONS FOR VICTIMS IN FEDERATION BIH

In the FBiH, the rights of civilian victims of war, including victims of wartime sexual violence, are regulated by the Law on the Basis of the Social Protection, Protection of Civilian Victims of War and Families with Children.⁹⁷ The Law recognises victims of conflict-related sexual violence as a separate category and requires a certificate that the person has suffered sexual violence, but it does not require proof of physical disability. The amendments to the law adopted in 2016 introduced an independent expert commission with a mandate to issue certificates to survivors. The Commission became fully operational in March 2017.⁹⁸ The Commission includes experts and professionals that have been vetted by associations of survivors and is a rare positive example of an inclusive and consultative process with NGOs and survivors. Bakira Hasečić of Women Victims of War, which had been in the past solely responsible for the certification, and other associations that Amnesty International spoke with were pleased with the composition of the Commission and expressed confidence in its work.⁹⁹

UNRECOGNISED IN REPUBLIKA SRPSKA

'Coming forward after 20 years, I am faced with questions. Where I was, what I did until now. They think I am applying now for the sake of money. But there was never any information on the radio or TV saying "please come forward and speak up". How should I have known?! Nobody encouraged me before, but I came forward now.'

Lejla, Tuzla

The RS Law on Protection of Civilian Victims of War, adopted in 1993 and currently in force, does not recognise victims of wartime sexual violence as a separate category of civilian victims of war.¹⁰⁰ Without the recognised status under law, the victims are practically cut off from the array of benefits and entitlements that are normally available to the civilian victims of war. The law established a strict cut-off deadline of January 2007 for applications, which resulted in many survivors failing to gain status and subsequent eligibility for a monthly pension and other forms of non-financial reparation benefits available to civilian victims, including free healthcare, rehabilitation and psychological support. Furthermore, in order to qualify for the status and related benefits in RS, a person has to demonstrate a physical disability of at least 60%. This discriminatory requirement excludes the remaining victims of conflict-related rape who are often unable

⁹⁷ Law on the basis of social protection, protection of civilian victims of war and families with children of FBiH, *Official Gazette of FBiH* nos. 36/99, 54/04, 39/06, 10/16.

⁹⁸ Interview with the Federation of BiH Ministry of Labor and Social Policy, 10 November 2016 and 4 April 2017, Sarajevo.

⁹⁹ Interview with Bakira Hasečić, Women Victims of War, 28 March 2017, Sarajevo.

¹⁰⁰ Law on protection of civilian victims of war of RS, *Official Gazette of RS*, nos. 25/93, 32/94, 37/07, 60/07.

to provide medical proof of physical disability and predominantly suffer from medical conditions that are not physical in nature.

The RS government does not keep an official record of the beneficiaries and it is difficult to determine how many of these persons received the status based on torture or sexual violence suffered during the war. According to Božica Živković-Rajilić of the Women Victims of War of RS association from Banja Luka, any women who obtained the status did so based on the time spent in camps, rather than on the grounds of wartime rape.¹⁰¹ Živković-Rajilić is among the first public voices in RS to openly speak about sexual violence against Serb women and advocate for their special status and a set of specific rights.

In 2015, the RS Government Gender Centre commissioned an independent study on the status of the Serb women victims of wartime sexual violence, which included recommendations on concrete improvements to the law.¹⁰² The intention was to ensure compliance with international law and enable survivors of sexual violence committed during the war to receive recognised status, as well as medical and social support. While the research narrowly focused on the women of Serb nationality, the Gender Centre was clear that the recommendations apply to all victims of sexual violence, regardless of their ethnicity. The Gender Centre succeeded in lobbying the RS National Assembly to acknowledge the findings of the study and adopt wide-ranging recommendations in 2015 including to initiate the legislative changes to remove the current restrictive criteria and recognise a special status for all victims of conflict-related sexual violence.¹⁰³ However, the RS authorities are yet to deliver on these commitments.

Amid growing pressure by local associations, in November 2016, the government of RS presented its own pre-draft law on victims of wartime torture. While the pre-draft purported to address the status and benefits available to the survivors, some of the proposed solutions were overly restrictive or vague and excluded many survivors and their families. Like the Law on Protection of Civilian Victims of War in RS, which is currently in force, the pre-draft law on the protection of victims of wartime torture included strict cut-off deadlines for applying, which would automatically exclude most survivors. In addition, it stipulated that people who were members of enemy military forces or who assisted the enemy cannot establish the rights to payment and other allowances.¹⁰⁴ Given the complex nature of the 1992-1995 conflict and the difficulty of ascertaining with precision the status and allegiances of survivors and their families, this provision could be widely interpreted to exclude many victims of non-Serb ethnicity and is potentially discriminatory.¹⁰⁵

In conversation with Amnesty International, the RS Ministry of Labour and Veterans' Affairs said that the Ministry had considered and incorporated many comments on the bill submitted by NGOs and UN agencies and shared with the organisation an updated, yet still unofficial, version of the bill, which was considerably improved. However, a number of proposals still in the text, including the provisions prohibiting persons broadly associated with 'enemy forces' from obtaining the rights, remain in contravention of international law and potentially discriminate against victims of other ethnicities and should be removed. Once completed and agreed among government institutions, the draft law is scheduled to be opened for public debate and is planned for adoption in the third quarter of 2017.¹⁰⁶

BRČKO DISTRICT - FAILURE TO ESTABLISH COMMISSION BLOCKING ACCESS TO STATUS AND BENEFITS

The 2015 Amendments to the Decision on the Protection of Civilian Victims of War in Brčko District introduced progressive requirements to allow victims of conflict-related sexual violence to apply for and obtain the status of civilian victim of war.¹⁰⁷ Unlike the earlier version that was in force until 2015, the amended Decision recognises psychological injury as a ground for the status, but requires a certificate that the victim suffered sexual violence and a medical proof of permanent psychological harm, which needs to be

¹⁰¹ Telephone conversation with Božica Živković-Rajilić, RS Žene žrtve rata, 28 April 2017.

¹⁰² RS Government Gender Centre – Centre for Gender Equality, *Information on findings and recommendations of the study on the status of the Serb women victims of wartime sexual violence*, March 2015, available at: http://www.vladars.net/sr-SP-Cyrl/Vlada/centri/gendercentarrs/Documents/Informacija%20%20latinnica_204855676.pdf.

¹⁰³ Interview with Spomenka Krnić, RS Gender Centre, 29 March 2017, Banja Luka.

¹⁰⁴ Art. 6 of the Predraft Law on Protection of Victims of Wartime Torture, November 2016.

¹⁰⁵ Local legal provider Vaša Prava considers this provision discriminatory on the grounds of ethnicity. See Vaša Prava, 'Analysis of Legislation in Bosnia and Herzegovina on the grounds of anti-discriminatory provisions', Sarajevo, 2007.

¹⁰⁶ Interview with Radojka Kela, RS Ministry of Labor and Veteran's Affairs, 29 March 2017, Banja Luka.

¹⁰⁷ The original Decision recognised the status of the survivor of sexual violence only if they could prove that a perpetrator has been found and convicted in their case, in addition to the proof of physical damage, a combination of conditions that in practice excluded the vast majority of the victims. See Decision on the Protection of Civilian Victims of War of Brčko District, *Official Gazette of Brčko District*, 33/2012 and 15/2015.

issued by an Independent Expert Commission for Assessing the Status of Victims.¹⁰⁸ While in theory there are fewer obstacles for accessing the status of civilian victims of war and related benefits, the victims of conflict-related sexual violence living in Brčko District are still stuck in limbo. Since the adoption of the Decision, the authorities in the Brčko District have failed to make the Independent Expert Commission operational, practically blocking access to the new applicants.

The establishment of the Commission has been plagued with problems from the very start. Some of the nominations for the Commission were met with criticism by associations representing survivors who expressed concern about the wartime record of several members and the overwhelming presence of men. The lack of confidence in the impartiality of the members contributed to the reluctance of many victims to apply for victim status. Finally, in March 2017, the chair of the Commission resigned from her position before it had even started working, thus perpetuating institutional uncertainty and continuing to block applications. At the time of Amnesty International's visit, the majority of survivors interviewed in Brčko District were not able to secure the status of civilian victim of war. 'Some members of the Commission are former war criminals. And I am supposed to give them a statement and tell them about rape in order to obtain the status of civilian victim of war?! I'd rather go without it,' Hajra told the organisation. She lives on a modest 200 BAM (100 EUR) of social assistance.

As of August 2017, only 24 persons in Brčko District had obtained the status of civilian victim of war based on wartime sexual violence under the original Decision, while many more continue to be denied their rights under the Decision.¹⁰⁹ The authorities in Brčko District must ensure, without further delay, that the Commission is instituted and fully operational and that its members are appointed in consultation with associations of victims and survivors.

2.4 COMPENSATION FOR VICTIMS OF WARTIME SEXUAL VIOLENCE: A NON-ENFORCEABLE RIGHT

Victims of the war crime of sexual violence are entitled to a compensation for damage 'as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law'.¹¹⁰ The compensation should strive to remedy the moral and material harm caused by the crime, and take into consideration the lost opportunities, including education, employment and earning potential, of the victims. As a part of the right to obtain prompt, adequate and effective remedies, victims should be able to obtain reparation – including compensation – through judicial and/or administrative processes.¹¹¹ Both of these processes offer benefits. While administrative compensation tends to rely on more flexible procedures and can reach a larger number of victims, judicial and civil justice processes through the courts can be empowering and provide victims with an opportunity to be heard and take more active roles as plaintiffs. As the type of compensation victims decide to pursue largely depends on the circumstances of their personal case and the context in which they are applying, both administrative and judicial mechanisms should be readily available to the victims.

The authorities in BiH have not done enough to ensure that all victims of war crimes of sexual violence can access compensation. While some progress has been achieved in terms of providing victims with the social benefits and monthly financial allowances that are related to their status as civilian victims of war, there are, as described above, serious discrepancies between entity laws on civilian victims of war and their implementation that stand in the way of victims' access to the status and allowances. These failures are also evident in the obstacles victims face in effectively claiming and collecting compensation from convicted perpetrators or the state in judicial proceedings and in inadequate legal assistance provided to survivors seeking compensation through the courts.

Victims of conflict-related sexual violence in BiH can seek compensation from the state through administrative means, i.e., by applying for a status of civilian victim of war, and from perpetrators and the state (as subsidiary liable) via judicial means by initiating criminal and/or civil proceedings. The administrative status of a civilian victim of war does not preclude the victims from filing claims through judicial proceedings as well. However, the level of access to such remedies varies, and in some cases, as in RS, they may not be available at all. FBiH offers what seems to be a closest approximation of an

¹⁰⁸ Art. 2 of the Decision on the Protection of Civilian Victims of War of Brčko District.

¹⁰⁹ Interview with IOM, 4 April 2017, Sarajevo.

¹¹⁰ UN Basic Principles, para. 20.

¹¹¹ UN Guidelines on Reparations, p. 6.

administrative compensation measure in the form of a monthly pension to victims on the basis of their being subjected to the crime of sexual violence. On the other hand, as described above, the RS legislation virtually excludes these victims by prescribing a range of criteria that collectively preclude most of them from achieving the status. In Brčko District, the implementation of an otherwise fairly progressive framework for administrative compensation is hampered due to the inability of the authorities to set up the Commission, which serves as an institutional mechanism to confirm that a person was indeed a victim of sexual violence.

Compensation claims in judicial proceedings have been equally problematic. The outcomes of such lawsuits have been unreliable and final payments, in the rare cases awarded, have been difficult to enforce. Finally, the victims who try to claim compensation through civil litigation often lose such cases and end up having to pay exorbitant court fees.

While in theory victims appear to have a range of options to secure redress, in practice they face systemic difficulties and roadblocks that leave them without adequate or any compensation and, often, completely demoralised.

ADMINISTRATIVE COMPENSATION: DISCRIMINATION BASED ON RESIDENCE

Administrative compensation flows from non-judicial processes used by the states to identify victims of gross violations of international human rights law and/or serious violations of international humanitarian law and provide them with reparation through an established administrative procedure.¹¹² Due to greater flexibility and lower evidentiary standards, administrative reparation programmes that include compensation can be more inclusive, victim-friendly and able to reach a larger number of victims than those resulting from court proceedings, where compensation claims are often subordinated to the judicial establishment of the responsibility of a perpetrator.¹¹³ When paid directly to the victim in a form of a guaranteed monthly allowance or a pension, administrative compensation could be an effective and empowering mechanism of redress for female victims. It provides routine and reliable income and stops other family members from wrestling over a one-time lump sum.¹¹⁴

In BiH, financial and other payments that are available to civilian victims of war, including survivors of sexual violence, are a hybrid of measures of reparation and a welfare/disability benefit. In the FBiH, the allowances are structured to acknowledge the violation and compensate the victim, and therefore cannot be lost or taken away with changing circumstances.¹¹⁵ Yet, they remain categorised by governments and international monetary institutions as 'social transfers', placing these payments in the sphere of social security system. This creates a situation whereby the allowances for wartime victims are threatened and potentially renegotiated with each new tranche of International Monetary Fund (IMF) and World Bank loans and it does little to alleviate pressures from the state to deliver stable compensation packages.¹¹⁶

In the FBiH, survivors of sexual violence receive payments equivalent to 100% disability, which amount to approximately 580 BAM per month (an equivalent of 260 EUR). This allowance is not means-tested or contingent on the level of income or disability and comes closest to a compensation for the suffered harm. By 2017, approximately 800 persons (700 women and 100 men) in the FBiH had obtained the status of civilian victim of war based on wartime sexual violence.¹¹⁷ For most survivors, this is their only monthly income. Meliha, a 45-year old survivor living in Sarajevo, told Amnesty International that her entire family depends on her allowance. 'I am unemployed. I have two teenage daughters and a husband who is retired with a minimal pension. The money I receive as a survivor is vital to our family, although they [Meliha's family] still don't know on what basis I am receiving it.'

In RS, civilian victims of war receive a monthly payment which depends on the level of physical disability (from 60% to 100% disability) with the maximum amount of 400 BAM (200 EUR). As the payment is not

¹¹² UN Guidelines on reparations, p. 6.

¹¹³ Ibid.

¹¹⁴ UN Guidelines on reparations, p. 17

¹¹⁵ While victims in FBiH cannot lose their status or the benefits due to changing/improving family or economic situation, they can and do lose the right to the status and allowances in case they change their residency, i.e., move to RS, Brčko District or abroad. As compensation as a measure of reparation is meant to provide redress for the harm suffered, it is not meant to be contingent on any circumstances other than the person's status of a victim of crimes under international law. Notwithstanding the restriction on residency, the status that is available to victims of wartime sexual violence in the FBiH is closest to a genuine measure of reparation.

¹¹⁶ For more on IMF/World Bank conditionality, see Popić, L. and Panjeta, B., 'Compensation, transitional justice and conditional international credit in Bosnia and Herzegovina: Attempts to reform government payments to victims and veterans of the 1992-1995 war', August 2009, Sarajevo.

¹¹⁷ Interview with Dobrica Jonjić, Federation BiH Ministry of Labor and Social Politics, 4 April 2017, Sarajevo.

based on a right being violated, but on the disability, which may or may not be related to the crimes committed against those persons under international law, the wartime allowances in RS are closer to a disability benefit than to compensation.¹¹⁸ At the time of writing, 1,384 persons, of whom approximately 400 are women, in RS were registered as civilian victims of war.¹¹⁹ RS does not keep segregated data for different categories, and it is difficult to say how many – if any – survivors of sexual violence are included in these allowances.

Civilian victims of war, including survivors of wartime sexual violence, in both entities continue to receive significantly lower disability benefits in comparison to the military victims of war (war veterans). This is manifest in the entitlements, which are significantly lower, often only 70% of the maximum monthly allowance that is available to war veterans. In addition to the lower allowances, survivors are not entitled to a range of other benefits, including family assistance, transport subsidies or scholarships for their children, all of which are available to military veterans of war. The disparities in the level of protection and the discrimination against certain categories of victims, including civilian victims of war and survivors of wartime sexual violence, were recognised by the UN Committee on Economic Social and Cultural Rights (ESCR).¹²⁰ In its 2013 Concluding Observations, the Committee urged BiH to 'ensure more equitable allocation of existing funds for social protection, in particular of disabled war veterans, civilian victims of war and of persons with disabilities in general, with a view to reducing discrepancies between the allocated budgets for each of the categories mentioned'.¹²¹ In 2017, the UN Human Rights Committee's (HRC) Concluding Observations on BiH included an identical recommendation urging the authorities to harmonise the disability benefits of these different groups.¹²²

In addition to the lower allowances, the victims of wartime sexual violence face further difficulties. In the FBiH, the survivors obtain the status of civilian victim of war at the entity level, but collect their monthly allowance in the canton where they live. The monthly allowances vary from canton to canton, as the FBiH provides 70% of the funding and the cantons provide the rest, sometimes with significant delay. As recognised by the UN Committee on Economic Social and Cultural Rights, these disparities in the level of enjoyment of economic and social rights, in particular social protection and access to healthcare, adversely affect everyone in BiH.¹²³ However, vulnerable categories and the persons for whom these allowances are a lifeline greatly suffer from the insecurity.

FBiH Ministry of Labour and Social Policy has prepared a Draft Law on Uniform Principles and Framework of the Material Support for People with Disabilities with the aim of addressing the inequalities in the levels of social benefits between civilian and military victims of war. However, at the time of writing, the law was still pending adoption in the House of Peoples of the FBiH Parliament.

Together with the allowances for war veterans, civilian victims of war and their families, the war-related payments amount to around 16% of the annual budget spending in FBiH¹²⁴ and over 10% in RS.¹²⁵ The objective lack of resources and the increasing pool of vulnerable social categories present a difficult conundrum for the authorities. Both FBiH and RS authorities noted persistent economic challenges and the thankless task of making trade-offs in the process of balancing various social payments. Survivors of wartime rape, who unlike war veterans are not a very well organised voting block, routinely end up on the losing end of political debates on social spending. 'Each time we hear that IMF is requesting BiH to reduce our benefits, we fear for our lives. Most of us are unemployed and this is often the only income we have,' Meliha, a survivor from Sarajevo told Amnesty International.

¹¹⁸ Popić and Panjeta, 'Compensation, transitional justice and conditional international credit in BiH', p. 17.

¹¹⁹ Interview with Radojka Kela, RS Ministry of Labor and Veterans' Affairs, 29 March 2017, Banja Luka.

¹²⁰ UN Committee on Economic, Social and Cultural Rights, *Concluding observations on the second periodic report of Bosnia and Herzegovina*, 22, E/C.12.BIH/CO/2, para. 10. Also, see UN Human Rights Committee, *Concluding observations on the third periodic report of Bosnia and Herzegovina*, CCPR/C/BIH/CO/3, para. 17-18.

¹²¹ UN Committee on Economic, Social and Cultural Rights, *Concluding observations on the second periodic report of Bosnia and Herzegovina*, E/C.12.BIH/CO/2, para. 22.

¹²² See also UN Human Rights Committee, *Concluding observations on the third periodic report of Bosnia and Herzegovina*, CCPR/C/BIH/CO/3, para. 17.

¹²³ UN Committee on Economic, Social and Cultural Rights, *Concluding observations on the second periodic report of Bosnia and Herzegovina*, E/C.12.BIH/CO/2, para. 10.

¹²⁴ The allocations for war-related payments in the FBiH amounted to almost 441 million BAM of the total FBiH budget in 2017 (ca. 2.74 billion BAM). FBiH Budget, available at: <http://www.fbihvlada.gov.ba/bosanski/budzet/>. This percentage does not include the war-related payments made by the cantons, which contribute up to 30% of monthly allowances for some groups, including the victims of conflict-related sexual violence.

¹²⁵ War-related payments in RS amounted to approximately 220 million BAM of the total budget in 2017 (ca. 2.5 billion BAM). RS Budget for 2017, available at: http://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mf/Documents/%D0%91%D1%83%D1%9F%D0%B5%D1%82%20%D0%A0%D0%B5%D0%BF%D1%83%D0%B1%D0%BB%D0%B8%D0%BA%D0%B5%20%D0%A1%D1%80%D0%BF%D1%81%D0%BA%D0%B5%202017%20%D0%B3%D0%BE%D0%B4%D0%B8%D0%BD%D0%B0_517300938.pdf.

COMPENSATION IN CRIMINAL PROCEEDINGS: A REMEDY IN THEORY

‘Compensation will be an additional mark on the perpetrator, and I would like to know that he always thinks about the crimes that he committed in the past when he needs to pay money to me.’

Unidentified victim¹²⁶

States have an obligation to ensure that victims of conflict-related sexual violence have access to judicial remedies, which include adequate, prompt and full reparation, including pecuniary compensation for the harm suffered.¹²⁷ The right to a remedy in the context of compensation also implies the obligation of the state to provide a procedural remedy, which enables the victim to exercise this right in practice and effectively obtain compensation. Legislation in BiH provides a possibility for victims to seek compensation through criminal or civil proceedings.¹²⁸

To date, courts in BiH have ruled in eight cases, including four in the second instance, to order convicted perpetrators to pay compensation to the victims of conflict-related sexual violence.¹²⁹ While this has broken the practice¹³⁰ whereby survivors had been automatically instructed to seek compensation in separate civil proceedings at the entity and district level exposing them to additional fees and lower standards of witness protection, the implementation of the decisions has not been without challenges. At the time of writing, even in these few cases, no compensation has been actually paid to the survivors. Perpetrators often lack funds themselves, making it impossible for courts to enforce such decisions.¹³¹ BiH does not have a victim compensation fund or alternative mechanism to compensate survivors of criminal acts in cases when convicted perpetrators are not able to pay damages, leaving the victims without the ability to effectively claim their right to compensation.

In addition to the legal obstacles to exercising a right to an effective compensation, survivors face other considerable challenges. Many report that they are rarely informed of their right to claim compensation when they are testifying during criminal proceedings against individual perpetrators and the majority of them continue to be advised to pursue their compensation claims in separate civil proceedings.¹³² The ability to claim compensation in the course of criminal proceedings is an important right¹³³ and carries a number of advantages for the victims of sexual crimes. Such cases are simpler and more cost-effective, and they do not expose victims to additional costs, such as court fees, costs of expert evaluations or an additional lawyer. Equally importantly, this approach enables witnesses to provide a single testimony and in proceedings that

¹²⁶ An unidentified victim who was awarded compensation in criminal proceedings, as quoted by Trial International, ‘Compensating survivors in criminal proceedings: perspectives from the field’, December 2016, available at: https://trialinternational.org/wp-content/uploads/2016/11/TRIAL-International_compensation-publication_EN_web.pdf.

¹²⁷ UN Basic Principles, Principles 12 and 13.

¹²⁸ For example, see Arts. 195 and 198 of the BiH Criminal Procedure Code, BiH Official Gazette, no. 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09, 93/09.

¹²⁹ Email correspondence with TRIAL Int., June 2017. Examples of cases confirmed in the second instance are: BiH v. Marković Bosiljko, Case no. S1 1 K 012024 15 KRZ, 29 February 2016, and BiH v. Slavko Savić, Case no. S1 1 K 017213 15 KRZ, 24 November 2015.

¹³⁰ Despite the fact that the BiH Criminal Procedure Code provided for the possibility for victims to claim pecuniary damages through criminal proceedings, until November 2015, there had been no known cases of courts handling criminal case and a compensation claim in the same proceeding. See Trial, ‘Enforcement of damage compensation claims of victims of war in criminal proceedings in Bosnia and Herzegovina: Situation, challenges and perspectives’, 2015, available at: http://trial.ba/wp-content/uploads/2015/10/ENG_Ostvarivanje-zahitjeva-za-naknadu-%C5%A1tete-%C5%Bertava-ratnih-zlo%C4%8Dina-u-okviru-krivi%C4%8Dnih-postupaka-u-Bosni-i-Herzegovini-%E2%80%93-stanje-problemi-i-perspektive-.pdf.

¹³¹ In interviews with Amnesty International, associations of survivors and lawyers representing them stressed that in many instances the alleged perpetrators moved their assets, i.e., signed them over to family members, since the end of the war or early on in the proceedings. The courts have overall failed to implement the measures to identify and secure the assets belonging to perpetrators and enable later enforcement of the compensation decisions.

¹³² TRIAL International, ‘Enforcement of damage compensation’, p. 11. Also, Interview with Bakira Hasečić, Women Victims of War, 28 March 2017.

¹³³ The procedural aspect of an obligation to provide an effective legal remedy implies the establishment of suitable institutions, primarily judicial institutions, such as criminal, civil, constitutional and special human rights courts, to enable victims of torture to obtain redress and enable them to initiate such procedures themselves. See *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, doc. A/HRC/4/33, 15 January 2007, para. 63. In BiH, victims of crimes under international law are entitled to assert a property claim against a person suspected or accused of having committed a criminal offence that violated a personal right of a victim. See Art. 195 of BiH Criminal Procedure Code.

can guarantee higher standards of witness protection, which is critical for the victims of conflict-related sexual violence, who are often reluctant to reveal their identities. Finally, for many victims, when awarded in the criminal proceeding, the compensation represents a symbolic satisfaction – an additional condemnation of a perpetrator and a formal recognition of their suffering.¹³⁴ According to TRIAL International, a local organisation which has assisted the victims in a number of proceedings, court decisions that include criminal conviction and awarded damages paint the fuller picture of a survivor's experience. The compensation, unlike conviction alone, 'encompasses the entirety of a survivor's story: not just the existence of the offence, but the specific harms that survivors have undergone because of the crime.'¹³⁵

COMPENSATION IN CIVIL PROCEEDINGS: HIGH COURT FEES BLOCKING ACCESS TO COURTS

'The expediency with which the authorities try to claim court fees from the victims who lost court cases is surprising, especially if one takes into consideration the complete apathy with which they pursue the enforcement of damages awarded to the victims, most of which have not been realised.'

Jasminka Džumhur, BiH Ombudsman's Office

Notwithstanding the recent limited progress of awarding compensation in criminal cases, criminal courts in BiH continue to refer victims to separate civil litigation. In theory, civil courts offer considerable advantages for victims of sexual violence, including lower evidentiary requirements and a greater role for the victims, who are in such proceedings elevated from a passive witness to a more active role of a plaintiff. However, potential plaintiffs have faced many obstacles in BiH. While pursuing claims before civil courts, the victims face re-traumatisation when they have, yet again, to provide their testimonies; they also bear the burden of proof, need to hire a lawyer and are responsible for paying the court fees in instances when their claims are dismissed.¹³⁶

The experience of testifying in legal proceedings, including having to recount the story of the crime in detail and face often aggressive cross-examination, is highly traumatic for most victims. Having access to adequate psychological support during this process can alleviate the level of stress and decrease the possibility of re-traumatisation. However presently, such support is not available in civil courts, and victims who decide to pursue their claims outside of criminal proceedings expose themselves to a deeply disturbing and potentially harmful experience.¹³⁷

While pursuing cases before civil courts, victims have no alternative but to hire a lawyer to facilitate what are highly technical claims for compensation. For the majority of victims of sexual violence, who are among the most vulnerable groups in BiH, such costs are unaffordable. Some level of legal support is available to survivors in criminal proceedings, however, such assistance is not readily accessible in civil courts due to the systemic shortages in the provision of legal aid at many levels in BiH.

Civil litigation often results in the dismissal of claims based on the statute of limitations or a narrow interpretation of evidentiary requirements forcing survivors to pay high court fees or face administrative seizure of their assets. The BiH Association of Camp Inmates reported that some of their members have had their possessions seized from their homes by court police, following unsuccessful litigation. 'Some of our members had court police in their homes trying to unplug and carry out their fridges and stoves to cover the

¹³⁴ Trial Int., 'Enforcement of damage compensation', p. 23.

¹³⁵ TRIAL Int., 'Compensating survivors in criminal proceedings: perspectives from the field', p. 19.

¹³⁶ This mainly covers adverse costs, while there is still a possibility of getting exempted from the obligation to pay taxes. The principal cost is the fees, which could be as high as 3,000 BAM (1,500 EUR) and are to be paid to the Attorney Office of Republika Srpska. in application of the principle that the losing party is responsible for the cost of proceedings.

¹³⁷ TRIAL Int., 'Compensating survivors in criminal proceedings: perspectives from the field', p. 30.

costs,' Jasmin Mešković of the Association told Amnesty International.¹³⁸ Other NGOs similarly report that survivors may be liable for anywhere between 6,000 and 10,000 BAM (3,000-5,000 EUR) in court fees, a significant sum in a country where the average monthly income is approximately 800 BAM (400 EUR) and for a demographic which is often unemployed. Meliha Merdžić of Women Victims of War speaks for many disillusioned survivors: 'This says everything about the state we live in, when the court police exercises power on destitute victims, but can't collect the compensation from convicted criminals. It's absurd!' Indeed, under the circumstances where the state lacks a mechanism to collect compensation from convicted perpetrators or securing basic benefits for the victims of war, the diligence with which the authorities attempt to recover court costs by repossessing the personal property of survivors, who are among the most vulnerable groups in the country, speaks poignantly about the prevailing attitudes and policy priorities of the authorities.

The financial hurdles facing those seeking compensation in civil proceedings are contrary to international norms. The authorities in BiH have an obligation to provide adequate free legal assistance to the victims of torture or ill-treatment who lack necessary means to bring complaints and to make claims for redress. This obligation is enshrined in the UN Convention against Torture to which BiH is a party. While the obligation of the losing party to cover court fees is not contrary to international law per se, the court costs imposed on the victims in such cases should not be so high as to represent an undue burden on the victims and should not hinder their access to courts and the right to institute proceedings.¹³⁹

In 2015 and 2016, the BiH Constitutional Court issued decisions¹⁴⁰ declaring that, if directed at the state or entities, the claims for pecuniary damages that are a result of war crimes are subject to the statute of limitations even though, according to international standards, war crimes are imprescriptible.¹⁴¹ This view resulted in widespread dismissals of compensation claims filed by the survivors before courts in all parts of the country¹⁴² – both in criminal and civil proceedings.¹⁴³ In the eyes of legal professionals in BiH, these opinions are of questionable legal merit and suggest that the state is attempting to protect itself from subsidiary liability for the damages.¹⁴⁴ The Constitutional Court changed its earlier position, whilst none of the circumstances or legal relationships have changed. Such erratic behavior of the highest court in the country only creates legal insecurity and creates the feeling among the victims that they are being punished once again,' argues Nedžla Šehić, a lawyer representing survivors in compensation cases.¹⁴⁵ The BiH Ombudsperson for Human Rights, Jasminka Džumhur, believes that the Constitutional Court opinion and the justice denied have further deepened the distrust of the legal system on behalf of survivors. 'This is a torture of victims in just another form.'¹⁴⁶ The UN Human Rights Committee also expressed concern about the opinions of the BiH Constitutional Court, which 'limit the ability of victims to effectively claim compensation'.¹⁴⁷ In 2017, the Committee urged BiH to 'urgently adopt legislative and practical measures to ensure that survivors of torture and sexual violence have access to effective remedies'.

Amnesty International believes that the BiH Constitutional Court's position stands in the way of survivors' ability to realise their rights to reparation. As the statute of limitations does not apply to crimes under international law, such as genocide, crimes against humanity and war crimes, they should not apply to criminal or civil proceedings in which victims of crimes against humanity seek full reparation.¹⁴⁸ Due to the

¹³⁸ Interview with Jasmin Mešković, president of the BiH Association of Camp Inmates, 11 November 2016 and 28 March 2017, Sarajevo.

¹³⁹ See *Cindrić & Bešlić v. Croatia*, (72152/13), ECtHR, 2016.

¹⁴⁰ See for example BiH Constitutional Court Decision of 10 November 2015, referenced at: <http://www.pravosudje.ba/vstv/faces/vijesti.jspx?id=58140>, and Decision of 21 September 2016, available at: <http://www.pravosudje.ba/vstv/faces/vijesti.jspx?id=63824>, as well as *Mustafa Karahasanović & Others v. Republika Srpska*, (AP-4128), BiH Constitutional Court, 28 March 2014.

¹⁴¹ See International Committee of the Red Cross, Customary International Humanitarian Law, Rule 160 ('Statutes of limitation may not apply to war crimes'). See also Article 29, Rome Statute of the International Criminal Court ('The crimes within the jurisdiction of the Court shall not be subject to any statute of limitations').

¹⁴² Prior to these decisions, the practice between the courts in RS and FBiH was different; the courts in RS had held this view for years prior to the BiH Constitutional Court decisions, while the courts in FBiH changed their practice only after the position of the BiH Constitutional Court changed in 2015.

¹⁴³ Interview with lawyer Nedžla Šehić, 8 November 2016. Also, see TRIAL Int., 'Compensating survivors in criminal proceedings: perspectives from the field', p. 39.

¹⁴⁴ Interview with lawyer Nedžla Šehić, 8 November 2016, Sarajevo, and Interview with TRIAL Int., 30 March 2017.

¹⁴⁵ Ibid.

¹⁴⁶ TRIAL Int., 'Compensating Survivors in Criminal Proceedings: Perspectives from the Field', Interview with BiH Ombudsperson Jasminka Džumhur, 18 May 2017, Sarajevo.

¹⁴⁷ UN Human Rights Committee, *Concluding observations on the third periodic report of Bosnia and Herzegovina*, CCPR/C/BiH/CO/3, para. 17-18.

¹⁴⁸ See Amnesty International, *International Law Commission: Second Report on Crimes against Humanity, Positive Aspects and Concerns*, (IOR 40/3606/2016), May 2016. Also, see Amnesty International, *No impunity for enforced disappearances, Checklist for effective implementation of the International Convention for the Protection of All Persons from Enforced Disappearance* (IOR 51/006/2011), November 2011, p. 18.

long-term physical and psychological effects of torture on the victims, statutes of limitations should not apply in these cases, as they deprive the victims of their right to redress, compensation and rehabilitation.¹⁴⁹

Furthermore, as is the practice in some Member States in the European Union, BiH should endeavour to award the compensation to the victims in case perpetrators are unable or unwilling to do so and then seek to obtain reimbursement from the perpetrator.¹⁵⁰ According to the UN Committee against Torture (CAT), in situations where civil proceedings are not able to provide adequate redress to victims, it is the responsibility of the state to implement an accessible mechanism, such as a national fund, to provide redress.¹⁵¹ The BiH Constitutional Court position on statutory limitations and the inability of the authorities to enforce decisions on compensation leave many victims without an enforceable right to a remedy, which is contrary to international law.¹⁵²

The option of pursuing compensation claims for torture and ill-treatment before civil courts is an important mechanism for redress, and the authorities should ensure that the victims can exercise this right without hindrance. Many victims of sexual violence are not able to identify the perpetrators, or the perpetrators may be missing or residing in other states and not available to courts in BiH. In such instances, civil claims against the state/entities may be their only means to secure some form of redress.

The combination of the rate of dismissals of compensation claims in civil proceedings, high court fees and the lack of adequate free legal aid for those who decide to pursue claims against perpetrators in civil proceedings serve as a powerful deterrent to survivors to seek justice; as indeed, does the fact that no such claim lies against the state, in virtue of the recent BiH Constitutional Court rulings. 'Survivors have lost trust in the justice system and the state and are increasingly losing the drive to fight for their rights,' Mima Dahić of Vive Žene told Amnesty International.

2.5 REHABILITATION

'You can't forget what happened to you. And you can't ever get over it. It stays with you forever. It sits somewhere deep, and little things, a loud noise, a more animated debate or a raised voice set it off and you are in a complete state of fear again.'

Meliha, Sarajevo

Rehabilitation aims to address physical and psychological harm caused to the victims and should be holistic and 'include medical and psychological care as well as legal and social services'.¹⁵³ Measures of rehabilitation should aim to restore, to the extent possible, victims' independence, physical, mental, social and vocational abilities and enable their full inclusion and participation in society.¹⁵⁴

The authorities in BiH, especially at the entity and cantonal levels, largely continue to ignore their obligation to provide adequate rehabilitation to survivors, though some progress has been made in specific areas in recent years through a combination of internationally funded programmes and deeply committed NGOs. Overall, the provision of rehabilitation, including medical care, psychosocial support, and legal assistance for survivors, falls short of the 'minimum core obligations to ensure highest attainable standard' prescribed by the International Covenant on Economic, Social and Cultural Rights (CESCR)¹⁵⁵ and World Health

¹⁴⁹ UN Committee against Torture, *General Comment no. 3 on the implementation of Art. 14 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, CAT/C/GC/3, November 2012, para. 40.

¹⁵⁰ See Victims Support Europe, *Handbook for Implementation of Legislation and Best Practice for Victims of Crime in Europe*, 2013, p. 46.

¹⁵¹ UN CAT, *General Comment no. 3*, para. 29.

¹⁵² Art. 14 of the UN Convention against Torture states that 'each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible'.

¹⁵³ UN General Principles, Art. 21. Also, see UN CAT, *General Comment no. 3*, para. 11.

¹⁵⁴ UN CAT, *General Comment no. 3*, para. 11.

¹⁵⁵ International Covenant on Economic, Social and Cultural Rights, Art. 12.

Organisation (WHO).¹⁵⁶ In the absence of a comprehensive statewide plan providing rehabilitation as a measure of reparation and faced with a highly fragmented system, victims rely on the existing health services in the entities and cantons that take little consideration of their special condition or their special physical and psychological needs. Women victims of rape and sexual violence suffer from a range of conditions, including gynecological problems, as well as urinary and digestive complications, anxiety, frequent headaches and sleeplessness, and depend on regular medications. Their wartime experience and its lasting effects present significant challenges to their day-to-day lives. Without adequate medical care and psychological and social support, some have not been able to resume normal life.

Naturally, the realisation of some economic, social and cultural rights, such as the right to health, is often contingent on the availability of resources. Considering the overall low socio-economic standard, BiH is struggling to provide adequate services to its citizens. However, notwithstanding the economic situation, all countries are obliged to ensure realisation of 'minimum core obligations' with respect to healthcare, including for physical and mental wellbeing. This obligation cannot be neglected or postponed because of the lack of resources.¹⁵⁷ In the context of victims of rape and sexual violence, this minimum core obligation should include the right to access health facilities, goods and services on a non-discriminatory basis, the provision of essential drugs and the equitable distribution of all health facilities, goods and services.¹⁵⁸

According to UNFPA research conducted among survivors of wartime sexual violence in BiH, 47% of respondents said that they considered the provision of adequate medical and psychological assistance the most important aspects of support.¹⁵⁹ While the obligation to provide rehabilitation as a part of reparation is not limited to the provision of health, for many victims of wartime sexual violence, adequate medical care, including psychological support, is a prerequisite to the enjoyment of other rights. Considering the profound and lasting effect of rape and sexual violence on the victims, it is essential that the right to reparation include the timely and appropriate provision of health services that are consistent with international standards and address the impact of sexual violence on women's health.

According to the UN Committee on Economic, Social and Cultural Rights, in order to meet the obligation under the right to the highest attainable standard of health, the health services should meet the criteria of availability, accessibility, acceptability and quality.¹⁶⁰

AVAILABILITY

Functioning public health and healthcare facilities, goods and services ought to be available in sufficient quantity within each state.¹⁶¹ This includes an adequate numbers of mental health-related facilities and support services and adequate numbers of medical and other professionals trained to provide these services.¹⁶²

The system of healthcare in BiH is generally fragmented and under-resourced and access to adequate healthcare for citizens who rely on publicly provided services is fairly strained. With only 190 doctors per 100,000 persons, BiH ranks significantly lower than the European average.¹⁶³ In this context, the survivors of wartime sexual violence who, as a result of their trauma have special medical needs, face even greater difficulties obtaining medical care.

In BiH, there is on average one Centre for Mental Health for every 30,000-50,000 people, leaving smaller municipalities without any coverage for mental health support. Even the municipalities with functioning facilities usually employ limited staff, often no more than one psychiatrist or one psychologist, and mental care is not readily available. According to Mima Dahić of Vive Žene, even towns with a significant population of survivors, such as Srebrenica and Bratunac with populations of about 15,000, have limited staff. 'In Srebrenica, the local clinic employs only one psychiatrist and one psychologist who work 50% and 30% of

¹⁵⁶ In the context of survivors of rape, minimum core obligations should include the right of access to health facilities, goods and services on a non-discriminatory basis; the provision of essential drugs; and the equitable distribution of all health facilities, goods and services.

¹⁵⁷ UN CAT, *General Comment no. 3*, paras. 12 and 37.

¹⁵⁸ Committee on Economic, Social and Cultural Rights, *General Comment No. 14 on the right to highest attainable standard of health*, E/C.12/2000/4, para. 43.

¹⁵⁹ UNFPA, *Stigma against Survivors of Conflict-Related Sexual Violence in Bosnia and Herzegovina*, 2016, available at: http://ba.unfpa.org/sites/default/files/pub-pdf/UNFPA%20Stigma%20Short%20ENG%20FIN1_0.pdf.

¹⁶⁰ Committee on Economic, Social and Cultural Rights, *General Comment No. 14 on the right to highest attainable standard of health*, E/C.12/2000/4, para. 12.

¹⁶¹ Ibid.

¹⁶² See Commission on Human Rights, *Report of the Special Rapporteur on the right to highest attainable standard of physical and mental health*, Paul Hunt, UN Doc E/CN.4/2004/49, para. 46 (a).

¹⁶³ Zavod za zdravstvo FBiH, *Zdravstveni sistemi u BiH*, available at: <http://www.zzjzfbih.ba/wp-content/uploads/2012/10/Zdravstveni-sistem-BIH.pdf>.

the time, respectively. This is far from adequate to meet the needs of survivors who require consistent support.¹⁶⁴ Availability is somewhat better in larger urban centres, which typically have a higher concentration of health institutions and personnel.

In the absence of appropriate institutional support, specialised medical services, including gynecological care and psychosocial assistance for survivors, are typically provided by NGOs, who are often the only institutions offering this kind of support to victims. However, in the face of limited resources, they are not able to treat all the victims who may need help. 'What we need in BiH are systemic changes, whereby the local Centres for Social Work gradually assume greater responsibility for psychosocial support. Unfortunately, at the moment, this is not happening. In places where the coverage of NGOs is weak, the support for the victims of sexual violence is virtually non-existent,' Aleksandra Petrić of United Women association from Banja Luka told Amnesty International.

ACCESSIBILITY

Services should be accessible to everyone without discrimination. They should be physically accessible and within reach of the people who need to make use of them, and economically affordable for all.¹⁶⁵

Many survivors cannot access health services with reasonable ease. They live in remote villages that normally do not offer even basic healthcare and that are poorly connected to main urban centres. Vive Žene association from Tuzla is assisting a group of women from Eastern Bosnia, some of whom live in inaccessible villages on the border with Serbia and for whom reaching any of these services is a true ordeal. 'They have to find someone to take care of their families and children for the day, track through forests for 6 km only to reach a bus stop, pay a fare which is unaffordable and take a long journey to the nearest town, only to face a web of bureaucratic challenges and health professionals insensitive to their condition or the trauma they suffered,' Mima Dahić of Vive Žene told Amnesty International.¹⁶⁶ The cost of local travel is too high for most survivors, especially since civilian victims of war and their families do not qualify for travel subsidies from the state. Finally, for many survivors, the procedures for receiving care in one of the local clinics or hospitals are lengthy and the prospects of having to navigate an administrative maze and face prolonged waiting times exacerbate the feeling of vulnerability and discourage many from even attempting to access these services.

In addition to the strained physical access, survivors have highly uneven access to health services depending on their place of residence. With a decentralised system and 13 separate ministries of health (two in the entities, ten in the cantons and one in Brčko District), the quality of and access to healthcare depends almost entirely on the economic standing of each locality. The discrepancies are especially pronounced among individual cantons and between urban and rural areas, leaving survivors who live in poorer regions with limited coverage. The survivors interviewed by Amnesty International in Sarajevo, Tuzla and Brčko had far better access to services, including regular appointments with neuro-psychiatrists and other specialists, than those living in smaller towns and remote villages, for whom specialist support was largely unavailable.

Additional challenges affect the women who live in RS and Brčko District, but are registered in FBiH as civilian victims of war. Some of them, like Elma from Vlasenica in Eastern Bosnia, forgo medical care in the places where they live in RS in order to continue receiving the monthly allowance as a recognised civilian victim of war in the FBiH. Elma was in her twenties, newly married and four-months pregnant when interred in one of the camps in 1992. As a result of the repeated rape and physical abuse by gangs of local paramilitary troops, she had lost the baby and suffered lasting injuries to her spine. Elma's spinal injury requires an intervention and she also needs medication that helps her depression and anxiety. She needs steady physical care and psychological counseling, as well as medication, yet she is now not able to access it in her place of residence in RS, as her 'official' residency is in the FBiH. Like many survivors who returned to RS, Elma had to make a difficult trade-off between keeping a monthly allowance, which helps her sustain her family, and having access to medical care that is vitally important for her ability to live a normal life. 'I didn't really have a choice. The allowance is the only income my family receives. We don't have any other support. I have a diagnosis of a serious spinal condition and live in terrible pain. But the treatment is long and expensive and not something I can afford.' If Elma and other women victims of sexual violence living in RS were able to obtain the status of civilian victims of war and access the benefits, they would not be forced to make such difficult choices. The victims should not be in a position to have to trade one right for the other. The authorities in RS and Brčko District must remove the obstacles that continue to prevent the

¹⁶⁴ Interview with Mima Dahić, Vive Žene, 30 March 2017, Tuzla.

¹⁶⁵ Committee on Economic, Social and Cultural Rights, *General Comment No. 14 on the right to highest attainable standard of health*, E/C.12/2000/4, para. 12 (b).

¹⁶⁶ Interview with Mima Dahić, Vive Žene, 30 March 2017, Tuzla.

victims from being officially recognised and given full access to public health services, including medical and psychological rehabilitation.

For many survivors, medical care is not economically accessible. Unlike Elma, Husnija from Brčko did not want to change her residency and is still waiting for the authorities in Brčko District to start awarding the status of civilian victims of war. Husnija lives off of 200 BAM (100 EUR) of social assistance and supplements this allowance by selling vegetables on the market. Husnija was a patient in Bijeljina hospital when the war started. She and a dozen other Bosniak and Croat women who happened to be there would be taken each night to a separate room and subjected to repeated rape by soldiers who were returning from the front. Husnija today suffers numerous health problems and is completely dependent on medication, including blood thinners that are not covered by the state-provided health insurance. If it were not for one of the associations who purchased a six-month supply of medication for her, she would be forced to go without them. 'I literally have to take a handful of pills every day, and only some of them are covered by my insurance. The rest, I have to cover on my own, which is well beyond my means. I am grateful for the assistance of the associations. They have saved my life. But this cannot be a long-term solution.'

Due to the range of chronic conditions they suffer as a consequence of rape and sexual violence, many survivors depend on medicines. The basic healthcare to which they are entitled covers only the medicines that are on the so-called essential list of medicines. Any other prescription represents an out-of-pocket cost. Survivors interviewed by Amnesty International were unanimous about the high cost of medication. As most medicines they take are not on the essential list, they have no alternative but to buy them themselves. For most victims, this is unaffordable. Zehra, a 69-year old survivor living in Brčko, suffers severe physical consequences of the rape she was subjected to in one of the camps. The torture left her with serious injuries to her reproductive organs. While undergoing surgery to remove her uterus after her release, the doctors who operated in inadequate conditions, accidentally hurt her intestines causing her a lasting damage. Zehra now also has cancer and is undergoing chemotherapy. With the range of medical problems, she spends close to 400 BAM (200 EUR) on medication per month. Most of it is not covered by insurance, and Zehra has to use her monthly allowance of 500 BAM (250 EUR) to cover this cost, leaving her with little on which to live.

Women who obtained the status of civilian victims of war in FBiH receive cards that are meant to provide them with preferential access in public institutions, including health clinics. However, survivors interviewed by Amnesty International said the cards were not universally accepted and in some instances their use caused unpleasant encounters with doctors or medical staff. Mirsada Terzić, who runs a small NGO assisting survivors in Tuzla, confirms this. In her experience, survivors rarely receive any preferential treatment and instead face public humiliation. 'The women usually encounter terse and insensitive medical staff when they attempt to use the card. They are ridiculed and told that it's been a long time since the war and that they should get over it. For women, many of whom still experience a strong feeling of shame and face social stigma about what they experienced, this is completely defeating.'¹⁶⁷ Preferential treatment does not exist for basic health services, including mammography, cervical and uterine screening and PAP tests. These are often scheduled in advance and the victims have to wait up to a year to get an appointment. 'Health services are catastrophic,' Alia from a village near Tuzla told Amnesty International. 'Doctors have no understanding for our special needs and, despite all the ailments, we have to wait for a year or even longer to undergo basic checks and screenings. After everything we've been through, the least they can do for us is to give us preferential treatment when accessing some services.'

Notwithstanding the financial limitations, the authorities in the entities and cantons must allocate resources to strengthen the capacity of service providers in the health sector to support the special needs of victims of wartime sexual violence. Sexual violence, combined with other crimes many of these women experienced or witnessed during the war and social stigma attached to rape, have had debilitating consequences on their physical and psychological wellbeing and their ability to reintegrate into society. Some measures, such as preferential treatment and trauma-sensitive approaches, are not resource-heavy and require only a change in policy, which would extend the existing treatment of military veterans of war and their families to this group.

¹⁶⁷ Interview with Mirsada Terzić, Our Voice, 25 May 2017, Tuzla.

ACCEPTABILITY AND QUALITY

‘What we need is support, not pity.’

Mima, Tuzla

Services should be respectful of professional ethics and be culturally and gender sensitive, and the staff should be well trained and professional.¹⁶⁸

Many survivors share accounts of degrading experiences at healthcare and social service providers. A lack of systematic training and sensitisation of staff, compounded by widespread social stigma and the prevalence of vulnerable social categories, threatens to hamper access to crucial services by victims. Survivor accounts tell a story that goes beyond the lack of recognition of a special status. With few exceptions, the common experience of women who spoke with Amnesty International is that most clinics show little respect to this population.

Husnija from Brčko says she was recently kept waiting from 8:00 am until 3:00 pm to see a doctor. Apart from her neuro-psychiatrist and another specialist she sees every two weeks and who are a major support, Husnija regularly experiences unpleasant encounters when seeking medical care. ‘I always run into problems. Last time, a General Practitioner I was going to see to renew my prescriptions kept me waiting for so long that I finally had to say something. When I did, the doctor came out and snapped back at me and then I also lost my temper. We had a major incident. I simply can’t take all this continuing injustice.’

Research conducted by Amnesty International shows that Husnija’s experience of a somewhat unpredictable service is shared by all survivors. The level of professionalism varies from location to location and largely depends on the prevalence of victims that doctors encounter regularly, training and personality. Several victims spoke highly of their neuro-psychiatrists and indicated that their dedicated support provides a lifeline. ‘My neuro-psychiatrist, Dr Amra, has been critical to my ability to move on with my life after everything that happened to me. She helped me talk about it, find a more constructive way to look at the past and stand back on my feet. She is always generous with her time and has been incredibly committed to the women survivors. She literally raised us from ashes after the war,’ Mima from Tuzla told Amnesty International. Many other women the organisation interviewed shared similar stories. They all stress the importance of being treated with respect for their dignity and a genuine desire to help. They also highly value the support they get from their therapists from NGOs, such as Vive žene, Medica and Snaga žene, and say they could not live without it. ‘What we need is support, not pity,’ Mima said, ‘and this is what some of these therapists provide.’

To counter the apathy and lack of action on behalf of the authorities, UN agencies launched in 2014 a comprehensive project to improve existing legislation affecting victims of wartime sexual violence, enhance and expand services that are sensitive to the special needs of survivors, and combat stigma in society. ‘Seeking Care, Support and Justice for Survivors of Conflict-Related Sexual Violence in BiH’ is a joint effort by the International Organisation for Migration (IOM), the UNDP, the UNFPA and the UN Women, that promotes systemic and long-term solutions aimed at increasing and institutionalising support for survivors.¹⁶⁹ The programme targets service providers, including in healthcare, economic and judicial sectors, with educational programmes that seek to improve their knowledge and capacity to deliver adequate services to the victims or expand their reach into rural areas. Under a separate programme funded by the EU, the association of NGOs, including Vive Žene and Medica Zenica in FBiH and ACED and United Women in RS, assist victims in their communities. These NGOs provide regular psychological care to survivors, both male and female, including individual and group therapies and, when possible, facilitate their access to publicly provided services. They also train the staff in institutions of public health and social services, as well as police, to improve their skills to identify vulnerable individuals and strengthen referral mechanisms among various institutions. The recent progress in the provision of these services and any qualitative improvements in the approach to the victims can be solely attributed to the efforts of NGOs and international organisations. For this reason, it is critical that the International Community continues prioritizing support for the NGOs

¹⁶⁸ Committee on Economic, Social and Cultural Rights, *General Comment No. 14 on the right to highest attainable standard of health*, E/C.12/2000/4, para. 12 (c) and (d).

¹⁶⁹ The UN Joint Programme is largely funded by the Government of the UK, the Government of Canada and UN Action. In addition to enhancing capacity of service providers, the programme includes two other streams of effort: legislative, which seeks to assist the authorities in efforts to improve and harmonise relevant legislation, and awareness raising about sexual violence and combating stigma in society.

providing psychosocial and other assistance to the victims, while encouraging broader reform and the development of institutional mechanisms to address their rehabilitation needs in a systemic and sustainable way.

FREE LEGAL AID

The obligation to provide rehabilitation includes the provision of free legal aid to the victims who lack the necessary means to bring complaints and to make claims for redress.¹⁷⁰ Despite the recent adoption of the state Law on Free Legal Aid, the system of free legal aid in BiH remains fragmented and unharmonised. The FBiH and Travnik canton are yet to adopt legislation, while authorities at other levels lack capacity, resources or trained staff to provide adequate assistance to citizens. As a result, free legal aid – which would significantly benefit the population of survivors and ease their access to justice, including compensation – remains available only in a limited number of jurisdictions in the country. Free legal aid and services continue to be provided by NGOs; however, due to a lack of resources and high demand, they are not able to address the needs of many survivors. Nearly all survivors interviewed by Amnesty International said they were unable to access free legal aid.

In its 2016 Report on BiH, the European Commission warned that ‘the fragmented, overall incomplete and unharmonised legal and institutional framework does not ensure equitable procedural rights and maintains discrimination in access to justice particularly to the detriment of the most vulnerable groups’.¹⁷¹ Amnesty International urges the authorities in BiH, especially at the entity and cantonal levels, to ensure that adequate resources and capacity are dedicated to free legal aid agencies in order to provide civilian victims of war, and especially survivors of wartime sexual violence, with effective access to free legal aid and fair access to justice.

2.6 RESTITUTION

‘Before the war, I was a good student. I participated in regional competitions in mathematics and had big dreams. I wanted to finish my degree and start a career. And then the war started and I was raped. This one person ruined everything. He killed all my dreams. I am not the same person any more. I have no dreams, no hopes. Just fear. Fear of being outside, fear of other people, of being alone.... I can’t work. I am not capable. Nothing can bring back that other person.’

Džana, Bijeljina

Restitution should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one’s place of residence, restoration of employment and return of property.¹⁷²

¹⁷⁰ See UN CAT, *General Comment no. 3*, para. 30. The obligation to provide free legal aid is enshrined in international law and jurisprudence.

¹⁷¹ European Commission, *Report on Bosnia and Herzegovina*, 2016, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_bosnia_and_herzegovina.pdf.

¹⁷² UN Basic Principles, para. 19.

In the context of these victims in BiH, restitution is mostly understood as restitution of property rights and ability to return to one's pre-war place of residence. While property return was one of the most successful processes implemented under the auspices of the Dayton Peace Agreement following the war, it has not been accompanied with measures that guarantee sustainable return, including vocational training and reintegration into the labour market. Women, and especially women returnees, are an especially vulnerable category; not only are they discriminated against on the basis of their ethnicity, but also on the grounds of their gender. According to the Committee on Elimination of Discrimination against Women (CEDAW), women's access to the labour market in BiH remains markedly low despite high levels of education. Discrimination on the basis of gender is widespread: women continue to be under-represented in certain sectors of the economy and politics, and disproportionately vulnerable to employment with temporary contracts.¹⁷³ In previous research by Amnesty International, survivors were unanimous that stable employment was central to helping them rebuild their lives.¹⁷⁴

In the FBiH, according to the law on civilian victims of war, all victims including survivors of wartime sexual violence, should be able to access vocational training and benefit from other measures to help them qualify for jobs. However, this part of the law remains largely unimplemented, mostly because of the lack of resources in the cantons, which are directly responsible for the implementation of the law. In addition, this population – by virtue of not being able to prove the required level of physical disability – is excluded by the FBiH Law on Rehabilitation and Employment of Persons with Disabilities, which among other things provides for the subsidies to companies that employ persons with disabilities across FBiH. Amnesty International considers that the Law on Rehabilitation and Employment of Persons with Disabilities should be amended in order to remove the requirement to demonstrate physical disability for victims of wartime sexual violence in order to qualify for this assistance.

In RS, the victims of conflict-related sexual violence are not recognised as a special category under law and therefore not eligible for any government-sponsored employment programmes, unless they gained their status as civilian victims of war more broadly. They have to rely almost exclusively on the extremely limited internationally-funded programmes.

Under a broader programme to assist the victims, UN agencies in BiH have been financing several projects that provided survivors with new skills, livestock or agricultural assistance to have a fresh start. Although limited in scope, the programme has shown how small but effective assistance can help women overcome trauma and restore a sense of dignity and control. 'Giving these women an opportunity to earn income and become independent and in control is positively empowering for most of them,' representatives of UN Joint Programme told Amnesty International.¹⁷⁵

Many victims interviewed by Amnesty International participated in such programmes and confirmed their transformative power. Fahra, a survivor living near Tuzla, received a large greenhouse, vegetables and fruit seeds and saplings two years ago and now runs a small-scale business. She is incredibly proud of the organic produce she grows. It feeds her whole extended family and she sells the rest on the market. Fahra says the money she earns supplements her allowance so she can live comfortably. More importantly, unlike the allowance she receives on the basis of rape, which is for her inextricably connected to the painful memories of the war, this income is something she is proud of. 'This greenhouse has enabled me to live an almost normal life. It keeps me busy and productive and helps me support my family,' Fahra told the organisation.

Husnija from Brčko lives a seemingly idyllic life. She has a large plot of land in the picturesque and fertile valley near the river Sava. Her tiny house was refurbished by UN High Commissioner for refugees (UNHCR). In addition to a greenhouse and vegetables, she also received a donation of livestock, including cows, sheep, goats and chickens, and now she runs a proper farm. Despite the rape she endured during the war, she is yet to obtain the status of civilian victim of war in Brčko or receive any compensation. The money she earns from selling the vegetables, fruit and dairy products is her only source of income, apart from modest social assistance. 'It covers basic living expenses and some of my medication. I am happy,' says Husnija. More importantly, the farm and the animals – including six stray dogs and even more cats she saved from the streets of Brčko – provide daily comfort and give her a sense of independence. 'I don't think I would have survived if it were not for this farm. It keeps me occupied and stops me from only thinking about the past.'

The above examples illustrate the importance of such small-scale income-generating programmes. Nearly all victims who had benefited from such assistance had a markedly better quality of life and were able to better

¹⁷³ Committee on Elimination of All Forms of Discrimination against Women, *Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Bosnia and Herzegovina*, CEDAW/C/BIH/CO/4-5, para. 33.

¹⁷⁴ Amnesty International, 'Whose Justice?', p. 51.

¹⁷⁵ Interview with UN Joint Programme, 15 July 2016, Sarajevo.

deal with their trauma. However, Fahra and Husnija are not the norm. The vast majority of the victims, especially those who live outside of the target regions for the UN or in the areas that are politically less important for the authorities, do not have access to this type of assistance. In order to reach women victims of sexual violence who live in extreme poverty and in remote areas that are poorly connected with big centres, future empowerment programmes should be expanded to include the often-neglected regions and groups who have not benefited from similar support. Similarly, NGOs should further strengthen the informal referral mechanisms and structures to ensure that victims who returned to their pre-war communities and live in less accessible rural areas are provided special support or connected with service providers able to deliver such assistance.

Elma, a victim who lives in a small village in Eastern Bosnia, has not seen any meaningful support. She and her family live in her mother's house, which is not a long-term solution and which causes Elma constant anxiety. Outside of her modest allowance, she and her family have no other income. Although they have a plot of land, she and her husband have not received any assistance that would enable them to turn the land into a source of income.

Elma lives in a village where she and her family are an ethnic minority. Some of her neighbours and a number of municipal officials are responsible for the crimes committed during the war, including the killing of Bosniak civilians. Elma's elderly and disabled father and her brother, who was only in his teens, were among them. She witnessed the killings and even testified in court several times. Yet, the perpetrators are still free and she has to face them on a daily basis.

Elma was detained in one of the camps and gang-raped on a daily basis by the local soldiers. Because of the violence she suffered during the war, Elma is not only in desperate need of regular medical and psychological assistance, but also of other forms of support that would help her rebuild her life. However, living in a small village in a part of BiH which is geographically remote and politically forsaken, she feels hopeless, forgotten and lonely. Sadly, her case is probably illustrative of the situation of the vast majority of survivors.

2.7 SATISFACTION AND GUARANTEES OF NON-REPETITION

'We are victims and continue to be victims. Our suffering did not end with the war. Still, I wish the society looked at us with different eyes. I wish we were seen as any other women and not as black sheep. We are not guilty of what happened to us.'

Esma, Brčko

The obligation to provide reparation includes two additional forms: satisfaction and guarantees of non-repetition. Satisfaction could include the public disclosure of truth, public apology and commemorations of victims. Guarantees of non-repetition include measures that would contribute to the prevention of similar crimes in the future, including adopting progressive legislation, promoting observance of codes of conduct and education. These two forms of reparations are largely symbolic in nature, but of significant importance for the victims. Two decades after the end of the war, the authorities in BiH, at the state or entity levels, have not publically recognised the harm or expressed an apology to the women who suffered rape and other forms of sexual violence. The authorities have additionally failed the victims by not universally recognizing their status or promoting their right to reparation.

The recently signed Declaration denouncing stigmatisation of female and male survivors of sexual violence in war was a rare positive development. In the Declaration, the BiH Interreligious Council, an organisation which gathers leaders of the Orthodox, Islamic, Jewish and Catholic communities, called on religious officials

in local communities to actively fight against social exclusion and condemnation of victims of wartime sexual violence.¹⁷⁶ Initiatives such as this one could be effective in encouraging wider community to provide support and understanding to victims, but also depoliticising the issue which has traditionally been divisive in the context of BiH.

War crimes of sexual violence remains a sensitive issue in BiH. While local organisations, such as Women Victims of War, Vive Žene and Medica Zenica, and UN agencies have been successful in raising awareness about wartime sexual violence, the issue is still a taboo in the public discourse and a strong stigma attached to rape persists in all parts of society in BiH. This is also one of the biggest obstacles to the better social integration of female survivors. The vast majority of them chose never to speak about the violence they suffered for fear of the reaction by their families and communities in which they live. Such fear appears to be justified. According to a UNFPA study on stigma in BiH, two thirds of victims said they were subjected to condemnation, insults and humiliation when their families and neighbours found out that they were victims of sexual violence, and many others experienced discomfort in seemingly routine situations.¹⁷⁷ Apart from profound feelings of shame because of what they suffered, survivors have to deal with frequent accusations that they are somehow responsible for what happened to them and that they had provoked the crimes. This is manifested not only in their communities. Until recently, during the cases of conflict-related sexual violence tried before courts, many witnesses were subjected to aggressive questioning which sought to imply that the act could have been consensual or that the victim did not offer sufficient resistance.¹⁷⁸

The survivors interviewed by Amnesty International shared disturbing stories of rejection and humiliation. Husnija, a survivor living in Brčko, said her family and her husband rejected her after her release from the camp. 'They called me a whore. They said that I got what I deserved and that I wouldn't have been raped unless I asked for it. This broke my heart. Who can you trust when your own family treats you like that after all the horrors suffered?! I had left one hell only to enter another.'

Some survivors face intimidation in their own communities. Esma and her family are returnees to what is now a predominantly Serb village in Eastern Bosnia. On a daily basis, she encounters persons who were responsible for the killing of her brother and father. They are still at large, and one of them serves in the local administration. However, the abuse she suffered by her own community hurt her just as much. When she went to ask for the electricity to be connected to her house, a manager of the local electricity company, who belongs to the same ethnic group as her, refused to assist her. 'First, he asked for money. When I told him that I didn't have any, he rubbed his hand over his crotch and said that there were other ways to pay. I was shocked and angry. I felt humiliated.' Esma does not speak publicly about the violence she suffered during the war; however, she said that most of her neighbours were aware of what she has been through.

The UNFPA study on stigma suggests that the fear of judgement and humiliation is why many victims chose to suffer in silence rather than speak up. 'For the survivors, the story of sexual violence means providing an opportunity to others for direct condemnation, insults and repeated trauma, which they often claim to find more difficult than the act of sexual violence. Each of these situations leaves profound consequences on the health and personal integrity of the survivors.'¹⁷⁹ The fear of a backlash from society similarly prevents many survivors from reporting the crimes, seeking medical support and fully reintegrating in society. Amnesty International stresses that addressing the causes and consequences of the stigma associated with sexual and gender-based violence is a part of each state's obligation to prevent and punish such acts. As a part of its international obligations, the authorities at all levels in BiH have to prioritise initiatives that aim to eradicate stigma and discrimination against rape and sexual violence survivors, and break cycles of victimisation and disempowerment among this group.¹⁸⁰

Finally, the authorities in BiH should agree on the text of a Strategy for Transitional Justice that includes measures of satisfaction, including means to recognise and appropriately memorialise the suffering of the victims. Elma, a victim from a small town in Eastern Bosnia agreed. 'The apology is important to us. It tells us that society recognises that we were not responsible for what happened to us and that the guilt lies elsewhere. When I watched one of the convicted war criminals admit his guilt and break down in court, saying he was genuinely sorry for all he did, I was deeply moved. I forgive him a little.'

¹⁷⁶ For the text of the Declaration, see: <http://ba.unfpa.org/en/news/declaration-interreligious-council-denouncing-stigmatization-survivors-sexual-violence-bosnia>

¹⁷⁷ UNFPA, *Stigma against Survivors of Conflict-Related Sexual Violence in BiH*, p. 7.

¹⁷⁸ See OSCE, *Combating Impunity* (Entity Courts), p.25-31.

¹⁷⁹ UNFPA, *Stigma against Survivors of Conflict-Related Sexual Violence in BiH*, p. 16.

¹⁸⁰ Amnesty International, *Recommendations to States at the Global Summit to End Sexual Violence in Conflict* (IOR 53/006/2014), p. 12.

RECOMMENDATIONS

In this report Amnesty International has documented how the successive governments of Bosnia and Herzegovina have failed to provide thousands of women who were raped during the 1992-1995 war with access to justice, truth and reparation.

The organisation suggests a set of recommendations which are outlined below and which, if implemented, could enable women victims of war crimes of sexual violence to access justice, truth and reparation for the human rights violations they experienced during the war.

ACCESS TO JUSTICE

AMNESTY INTERNATIONAL CALLS ON THE BIH COUNCIL OF MINISTERS TO:

- Ensure that victims of war crimes of sexual violence have access to justice, and that cases of rape and other war crimes of sexual violence are promptly, independently, impartially and effectively investigated and, if there is sufficient admissible evidence, prosecuted in accordance with international fair trial standards;
- Expedite the prosecution of crimes under international law, while continuing to provide an adequate level of physical, psychological and legal support to victims and witnesses in these proceedings;
- Consider revising applicable criminal codes to exempt crimes under international law from provisions on the conversion of sentences into fines, as the practice is tantamount to granting of an amnesty, which is prohibited under international law;
- Ensure that Courts and prosecutors' offices that currently lack full-time witness support officers are allocated funds to employ this staff. Any further transfer of cases of conflict-related sexual violence from the Court of BiH to lower-level courts should be contingent on the existence of adequate witness protection infrastructure and staff;
- Develop and adopt a revised National Strategy for Processing War Crimes that includes new timeframes for the prosecution of war crimes cases.

AMNESTY INTERNATIONAL CALLS ON THE BIH CONSTITUTIONAL COURT TO:

- Reconsider the position that the ECtHR ruling on *Maktouf and Damjanović v. Bosnia and Herzegovina* extends beyond sentencing in cases of crimes under international law and precludes the courts in BiH from using the definitions of crimes under the BiH Criminal Code when classifying acts, as this practice may result in some serious crimes under international law not adequately being classified and tried. The courts in BiH should use the BiH Criminal Code for the legal qualification of the conduct, as this code more fully criminalises domestically the conduct which was already criminalised under international law at the time when the crimes were committed (1992-1995). The 1976 SFRY Criminal Code does not offer the same level of compatibility with the international law requirements as they were at the time of the commission of the crimes;

- Reconsider the position that the statute of limitation applies to compensation claims related to crimes under international law – as statutes of limitations should not apply to any proceedings related to these crimes or civil tort claims.

AMNESTY INTERNATIONAL CALLS ON THE COURTS IN BIH TO:

- Provide clear reasoning for each individual case when deciding on the application of mitigating and aggravating factors to ensure that they comply with law. The application of mitigating factors in cases involving crimes under international law should never lead to sentences imposed being at a level that the law envisages for minor offences;
- Ensure that they are applying special evidentiary rules in all cases of conflict-related sexual violence;
- Inform victims about their right to claim compensation for material and non-material damages during criminal proceedings;
- Before entering plea-bargain agreements with the accused, consult victims as to their expected outcome of the trial and ensure that they are aware of the advantages and disadvantages of such deals. Victims should be given an opportunity to express concerns about a potential deal through a legal representative. Prosecutors' offices should ensure that victims receive institutionalised support from a witness support officer throughout the process;
- Provide adequate and continuous psychological support to victims and witnesses before, during, and immediately after war crimes trials.

AMNESTY INTERNATIONAL CALLS ON THE RS AND FBH AUTHORITIES TO:

- Allocate financial resources to increase the capacity of the courts in entities to deal with war crimes cases. This should include further strengthening of standards of witness protection and support, adequate staffing of the entity courts and prosecutor's offices, and adequate training for justice officials and other staff working with victims and witnesses. Any further transfer of cases of wartime sexual violence from the Court of BiH to lower-level courts should be contingent on the existence of adequate witness protection infrastructure and staff;
- Consider revising applicable criminal codes to exempt crimes under international law from provisions on the conversion of sentences to fines, as the practice is tantamount to granting an amnesty, which is prohibited under international law. Alternatively, consider reducing the maximum sentence eligible for conversion to six months, as is the case in Republika Srpska, which would eliminate the possibility of the conversion of sentences for war crimes.

AMNESTY INTERNATIONAL CALLS ON THE INTERNATIONAL COMMUNITY IN BIH TO:

- Continue providing financial and other support to strengthen the institutional capacities of the judiciary in BiH to prosecute crimes under international law consistent with the highest legal standard;
- Continue funding NGOs that provide critical psychological, social and legal support to victims and witnesses participating in war crimes proceedings.

REPARATION

AMNESTY INTERNATIONAL CALLS ON THE BIH COUNCIL OF MINISTERS TO:

- Together with the authorities in the entities, consider and put in place a comprehensive statewide rights-based framework for redress for civilian victims of war, including survivors of wartime sexual violence. This would include the adoption of the Draft Strategy for Transitional Justice and Programme for Victims of Sexual Violence in Conflict. These measures do not need to infringe upon constitutional competencies of the entities, but must ensure that lower-levels of authorities remove restrictive and discriminatory provisions in their legislation and policies and adopt harmonised solutions that are in line with BiH's obligations under international law;

- Together with the authorities in the entities, develop and adopt a BiH Framework Law on Protection of Victims of Torture that defines criteria for obtaining the status of the victim of wartime torture, including victims of conflict-related sexual violence, and provide a set of specific rights and entitlements that are guaranteed to victims on the entire territory of BiH. While the entities remain responsible for the provision of social support services, this legislation should include a set of overarching principles and prescribe specific rights, ensure equality of treatment of victims regardless of their place of residence or ethnicity and provide guarantees for appropriate medical and psychological care;
- Establish a victim compensation fund for the survivors of wartime sexual violence, in particular to address the cases where convicted perpetrators are not able to pay the damages;
- Together with the authorities in the entities, create and fund initiatives that aim to eradicate any stigma and discrimination against rape and sexual violence survivors, and break cycles of victimisation and disempowerment among this group;
- Either through the adoption of the Draft Strategy for Transitional Justice and Programme for Victims of Sexual Violence in Conflict or separately through a consultative process that engages victims of wartime sexual violence, adopt measures of satisfaction, including public recognition of the harm shouldered by the women during the conflict or appropriate memorialisation of their suffering.

AMNESTY INTERNATIONAL CALLS ON THE COURTS IN BIH TO:

- Continue the practice of awarding compensation for damages for wartime sexual violence in criminal proceedings before state and entity-level courts. This should not exclude the possibility of being able to seek and receive compensation in civil proceedings irrespective of criminal conviction of the alleged perpetrators;
- Ensure that the right to receive compensation in civil and criminal proceedings is an enforceable right in practice.

AMNESTY INTERNATIONAL CALLS ON THE RS AND FBH AUTHORITIES TO:

- Actively participate in the efforts at the state level to develop a Framework Law on Protection of Victims of Torture and, in the interim, ensure that legislation governing the status, rights and social benefits for survivors of wartime sexual violence at the entity level is fully harmonised and provides equal protection to all survivors regardless of where they live in BiH;
- Ensure that all levels of authority pass appropriate legislation on free legal aid and harmonise existing legislation with the BiH Law on Free Legal Aid. Ensure that adequate resources and capacity are dedicated to free legal aid agencies at all levels in order to provide civilian victims of war, and especially survivors of wartime sexual violence, with effective access to free legal aid and fair access to justice regardless of their place of residence;
- Take measures to raise awareness of the status of civilian victims of war, the possibility of applying for it and the rights deriving from it;
- Implement measures to remove the discrepancy between the social benefits available to civilian victims of war, including survivors of wartime sexual violence, and those of war veterans;
- Put in place measures to free victims of wartime sexual violence from bearing the burden of the cost of civil proceedings on damage compensation claims when these costs would obstruct access to courts;
- Ensure that, in practice, victims have preferential access to healthcare and that psychological support and social services are provided in a manner that addresses their special needs;
- Allocate additional resources to the Centres for Mental Health in order to increase the number of professionals who can provide psychological, psychiatric and other necessary health support services in the municipalities where they are needed, particularly by the victims of sexual violence;
- Adopt entity-level strategies for provision of healthcare that would address the special needs of the victims of conflict-related sexual violence. Such strategies should envisage that the victims are given special attention in the development and implementation of entity health plans and that health

professionals and service providers receive training on how to respond appropriately and responsibly to this group.

AMNESTY INTERNATIONAL CALLS ON THE RS AUTHORITIES TO:

- Ensure that the draft RS Law on Civilian Victims of Wartime Torture does not include any provisions that would restrict its application or exclude victims of conflict-related sexual violence, including those of non-Serb ethnicity, from the ability to obtain the status of civilian victims of war and accompanying social and welfare benefits. Specifically, this law should not include cut-off deadlines for applying for the status.

AMNESTY INTERNATIONAL CALLS ON THE FBiH AUTHORITIES TO:

- Amend the Law on Rehabilitation and Employment of Persons with Disabilities to either add mental or psychological impairment as a criterion or remove the requirement to demonstrate physical disability for victims of wartime sexual violence in order to qualify for this assistance.

AMNESTY INTERNATIONAL CALLS ON THE BRČKO DISTRICT AUTHORITIES TO:

- Make appointments to the Expert Commission issuing certificates to the victims without further delay to ensure that they are fully staffed and operational and ready to consider the backlog of applications. The members of the Commission should be appointed in consultations with the associations of victims and survivors in a more inclusive process.

AMNESTY INTERNATIONAL CALLS ON THE NGOS IN BIH TO:

- Continue offering specialised reparations services currently not provided by the state, such as psychological, legal and economic counseling, while advocating for the state to meet its obligation under the law to protect and care for its citizens.

AMNESTY INTERNATIONAL CALLS ON THE EUROPEAN COMMISSION DELEGATION IN BIH TO:

- Include concrete benchmarks related to the justice agenda, including access to justice, truth and reparation for civilian victims of war, and monitor progress and offer guidance and support to BiH through pre-accession political dialogue and annual progress reports, as envisaged in the 2015 EU Council Conclusion on Transitional Justice;
- Avoid conditioning funds directed for the prosecution of war crimes and support functions in a manner that could leave critical functions, such as witness protection and support, contingent on political agreements on state-level reforms;
- Continue working with the BiH Council of Ministers to develop a Transitional Justice Strategy that would ensure the institutional recognition of victims, provide systemic and effective measures of redress and have the necessary political commitment to be implemented.

AMNESTY INTERNATIONAL CALLS ON THE INTERNATIONAL COMMUNITY IN BIH TO:

- Continue supporting initiatives and programmes that assist victims of wartime sexual violence with legal aid, psychosocial assistance and reintegration, including through funding legal aid providers and NGOs that are currently delivering these services;
- Ensures continued financial and other support to UNDP, UN Women, UNFPA and IOM and enable continued implementation of their programmes directed at strengthening the capacity of service providers to deliver psychosocial assistance and empowerment programmes for victims of conflict-related sexual violence;
- Expand future empowerment programmes to identify and include the often-neglected regions and groups that have not benefited from similar support in the past and have extremely hindered access to most services. This includes remote rural areas where the victims may not be concentrated in large numbers or where existing associations and NGOs may not be active.

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'WE NEED SUPPORT, NOT PITY'

LAST CHANCE FOR JUSTICE FOR BOSNIA'S WARTIME RAPE SURVIVORS

Two decades after the end of the war in Bosnia and Herzegovina (BiH), many of the estimated 20,000 women who had been subjected to rape and other forms of sexual violence are still battling with the pervasive and devastating consequences of these crimes. They are not only suffering from the physical and psychological scars of the violence committed against them, but also from the denial and neglect by the authorities.

The vast majority of victims suffer in silence. They are discouraged from seeking their rights to the support they so badly need by a variety of institutional, political and social challenges. Few have received any financial assistance from the state and live in poverty, without the medical treatment and medicines on which they depend. Living with chronic illnesses and often-debilitating psychological trauma, many survivors subsist at the margins of society.

This report paints a bleak picture of the conditions in which many survivors live today and shows how a combination of factors – including dysfunctional constitutional, judicial and administrative structure, the lack of resources and political paralysis - has resulted in the failure of the authorities to provide the victims with meaningful justice and reparation for the crimes they suffered.

The report calls on the authorities in BiH to remove the obstacles that currently prevent many victims from accessing their rights and urgently agree on concrete measures that would make tangible improvement to their lives. In the face of an ageing and gradually declining population of survivors, this may be the last opportunity for BiH to address their suffering and deliver their rights in accordance with its obligations under international law.