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*Capacity Building and Resilience Enhancement
through Strengthening Research and Debating
Capacities of Young Professionals in Bosnia and
Herzegovina*

*Application of the UN Resolution
1325 in the protection of women
who suffered gender-based violence
during the Bosnian War*



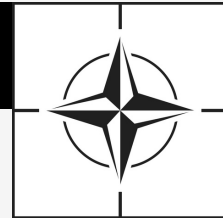
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APPLICATION OF THE UN RESOLUTION 1325 IN THE PROTECTION OF WOMEN WHO SUFFERED GENDER-BASED VIOLENCE DURING THE BOSNIAN WAR

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INTRODUCTION

Though women are disproportionately affected by conflict, their participation in conflict prevention and resolution does not keep a strong track record (USIP n.d.). Signed in 1995, the Dayton Agreement, as the first major step towards peacebuilding in war-torn Bosnia and Herzegovina, stands as a textbook example of women's exclusion from important political processes. In the war's immediate aftermath, the civil society in Bosnia and Herzegovina blossomed, including a significant number of newly-formed women's organizations (Babić-Svetlin 2009). These organizations were the first to cross the entity lines of demarcation and initiate peacebuilding processes, even reaching the country's rural areas. Despite the enormous contributions they made during a critical time of the country's transitional period, their work frequently highlighted the inequalities women face in various fields, including women's participation in the highest political decision-making (ibid). This, however, cannot be seen as an isolated case.

Women's issues, including discrimination and their political and social participation, have been addressed by the United Nations since 1975, the year of the first international conference focused on the status of women held by the organization (United Nations n.d.). However, while the 1995 Beijing Declaration and 2011 Istanbul Convention made further contributions towards a more progressive and inclusive era for women, only one-fifth of global agreements have included provisions on women's rights since 1990 (Tripp 2020).



That said, due to the lobbying efforts of the Coalition on Women and International Peace and Security, the status of women in conflict and post-conflict environments did not go unnoticed.

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Last year marked the 20th anniversary of the adoption of the Resolution in Bosnia and Herzegovina, where it is estimated that between 20,000 and 50,000 women suffered rape during the war (Husarić 2021). Given the country's history on the issue, the Resolution is important as it underscores that peace and security efforts are more sustainable when women are equal partners in preventing violent conflict, providing protection and aid, recovering from armed conflict, and establishing permanent peace. However, there are many difficulties to successful post-conflict mitigation, inclusive peace, respect for women's human rights, and equitable involvement in the country today. More than 20 years later, the government still fails to provide full recognition and serve justice to the survivors on state and entity levels. In the Action Plan for the Implementation of Resolution 1325 in Bosnia and Herzegovina for the period 2018-2022, published by the Ministry for Human Rights and Refugees and the Gender Equality Agency of Bosnia and Herzegovina, the main inconsistency is the understanding of women's role in state institutions. Main motive of this Action Plan is to raise data on women engagement rather than thoroughly elaborating impact of women engagement and contribution to the state institutions in the long term.

Consequences of such nature slow down the process of reconciliation and peace-building, which does not only pose a threat to the country's democratization process but regional stability and peace. Without harmonization in defining sexual violence crimes on state and entity levels, sufficient sensibilization on the topic by judges, prosecutors, and defense attorneys, and adequate financial and other forms of compensation for sexual violence survivors, it is



difficult to move forward towards Resolution's full implementation. While there are many more steps to be taken, this might be the right place to start.

MAIN PROBLEMS IN CURRENT LEGISLATION ON PROTECTION, INCLUSION, AND COMPENSATION OF FEMALE WAR SURVIVORS OF SEXUAL VIOLENCE

There are no laws in Bosnia and Herzegovina that regulate the rights of survivors of wartime rape and torture on the state level. The consequence of this is the lack of harmonization in defining war crimes and their survivors between entities, which not only leads to the non-prosecution of perpetrators, but puts survivors under a difficult position where they can not address their cases in court, let alone obtain the status of a war crime survivor. Until 2018, Republika Srpska ("RS") excluded the survivors of sexual violence and rape from its law on Principles of Rights and Protection of Civilian Victims of War. The law required evidence of visible physical injury "of at least 60%" as a result of sexual violence during the war (Official Gazette of RS 24/10), which left many survivors unable to obtain necessary medical documents, and neglected the psychological effects the survivors suffered as a result of the crime. Though a late response, the Law on Victims of War was adopted in 2018 by the RS government, with Art. 4 of this law defining a victim of war torture as "a person who has been raped or suffered any form of sexual abuse against his or her will" (Official Gazette of RS 90/18). However, the time frame for the request for the recognition of these rights is rather limited, as the survivors are able to make a request only within five years from the entry into force date, meaning that the requests for recognizing their rights are limited to only two more years. In addition, the RS law covers the period from 1990 to 1996, leaving another inconsistency with the FBiH's legislation, which covers the period from 1992 to 1995.

The Law on Principles of Social Protection, Protection of All Civilian Victims of War, and Protection of Families with Children of the Federation of Bosnia and Herzegovina (Official Gazette of FBiH 14/09) are based on the social protection of civil victims and their families, as well as their basic rights and beneficiaries. Under the law of the FBiH, people who have suffered sexual assault and rape are recognized as a specific category of civilian war victims.



In contrast to Republika Srpska laws, this law requires material proof that the survivors suffered sexual assault during the war, without proving the physical trauma caused by it. Following amendments in 2016, an Independent Expert Committee which consists of lawyers, psychologists, and neurologists, has been also included in the process of determining the status of civilian victims. By the end of 2017, it processed around 30 requests. (Amnesty International 2017). With this in mind, many survivors still face fear and doubt from the judiciary system when reporting their cases and are frequently misinformed about the rights to do so. In the case of Velibor Bogdanović, who was sentenced to 5 years of imprisonment in 2015, the Defense questioned the credibility of the survivor's testimony, emphasizing that the case was reported 17 years after the war (Court of Bosnia and Herzegovina 2011). While Bogdanović was convicted for war crimes against civilians, by means of rape and unlawful detention, this case clearly provides an insight into the vulnerable position of victims before the court. It sheds light on the potential of disregarding the testimonies solely due to the time when the case was reported, and shows the ways the victims might be exposed to additional stress and trauma.

Another issue that each of these laws confronts is the low compensation sum that is paid to war rape survivors. In the Federation of Bosnia and Herzegovina, the compensation amounts to 40% of the specified basis of 514 BAM (Guide for Civilian Victims of War 2007), which in the end results in the amount of approximately 205 BAM awarded. In the RS, the monthly compensation amount differs based on different acts of sexual violence and are between 127-298 BAM (Sarajevo Times 2017). While it is impossible to put a price on one's suffering, it is clear that the amount provided for the survivors is far from an adequate response to the crimes committed. Moreover, most survivors do not even receive minimal compensation provided.

For example, in 2016, former Bosnian Serb soldier Slavko Savić was directed by the state to pay 30,000 BAM to the survivor he raped in Vogošća in 1993. His defense, however, has claimed that he has no property or income that would allow him to financially compensate the victim (BIRN 2016). Another example is the case of former Bosnian Serb soldiers Bosiljko and Ostoja Marković, who were convicted of raping a 14-year-old girl in the Kotor Varoš region in 1992. Aside from the 10 years' imprisonment, the accused were sentenced to compensate the survivor with 26,500 BAM.



The Bosnian and Herzegovinian Constitutional Court has declared that compensation may only be recovered from the direct culprit, not from the state or one of the country's two entities that oppose another problem (ibid). This is catastrophic for torture survivors since there is no definite mechanism for them to receive recompense for their suffering.

As of today, the legal system in Bosnia Herzegovina has yet to be sensitized to the topics of sexual violence and torture. Lack of law practitioners who recognize the psychological effects of undergoing a trial, lack of professional medical support offered to the victims before and during a trial, and the negligence over the use of appropriate terminology in front of victims all actively discourage the victims from reporting their cases. Public stereotypes such as ones that survivors sexually incite violence through promiscuous behavior; that they do not resist, and the survivors agree to the crime of sexual violence; that survivors lie about sexual violence; or that survivors, rather than perpetrators, should be ashamed create stereotypes that cause survivors to remain silent (Delbyck 2017). The courts on all levels in Bosnia and Herzegovina still proceed to offer the benefit of the doubt and try to dismantle survivors' testimonies by offering certain circumstances in which the crime committed should be justified. Therefore, it is no surprise that many cases never make it to court. Although the Action Plan discussed the steady increase of cases dealing with war-time sexual violence in court, with 46 ongoing cases in 2017, it is important to note that the numbers remain low compared to the estimated number of victims. Needless to say, without the sensitization of the legal system, it is difficult to expect any major changes in the number of cases handled by the court in the future.

While not legally binding, organizations committed to providing a platform for female survivors of sexual violence, such as the Women's Court, can play a central role in community-building and might provide relief to the survivors (Women's Court n.d.). In the Women's Court, women are free to share their testimonies, without being questioned or judged. The survivors are also encouraged to develop new legal practices and strengthen the network of mutual support. Such initiatives are essential in complementing the legal system, and provide a way for a more direct involvement of the victims in future policy-making.



RECOMMENDATIONS

To ensure full and effective implementation of the UN Resolution 1325 in protecting the survivors of gender-based violence during the 1992-1995 war, the state and entity institutions in Bosnia and Herzegovina must take the following steps;

- 1** Introduce nation-wide legislation on the protection and rights of war torture survivors, which would provide clear definition of survivors of rape and specify penalties for the perpetrators;
 - a.the penalties must include obligatory financial compensation to the survivors by convicted war criminals with an 100% payout rate
 - b.defining minimum paid amount rather than maximum value
- 2** Harmonize legislation on war torture survivors on the entity and Brčko District levels, in line with the provision introduced on the state level;
- 3** Harmonize legislation which explicitly recognizes victims of war on the entity and Brčko District levels, in line with the provision introduced on the Canton Sarajevo level;
- 4** Extend the time frame for obtaining war survivor status and the rights on protection and compensation;
- 5** Recognize various forms of physical and psychological effects the survivors experience as a result of rape in the state legislation;
- 6** Prohibit inappropriate means of survivor interrogation, such as examining inadmissible evidence and using language which installs fear and encourages trauma responses in survivors;
- 7** Establish a well-functioning system of witness protection on all levels of government in order to obtain complete testimonies;
- 8** Introduce additional training for judges and other law practitioners on psychological effects of trauma.



REFERENCES

- 1 Amnesty International, 2017. Submission to the United Nations Committee against Torture, [online] Available at: <https://www.amnesty.org/es/wp-content/uploads/2021/05/EUR6372192017BOSNIAN.pdf>
- 2 Atwood M., 2017. Margaret Atwood on What 'The Handmaid's Tale' Means in the Age of Trump. [online] New York Times. Available at: <https://www.nytimes.com/2017/03/10/books/review/margaret-atwood-handmaids-tale-age-of-trump.html>
- 3 Babić-Svetlin K., 2009. Analiza situacije Izvještaj o stanju ravnopravnosti spolova u Bosni i Hercegovini. [online] Available at: <https://www.unicef.org/bih/en/reports/analiza-situacije-izvje%C5%A1taj-o-stanju-ravnopravnosti-spolova-u-bosni-i-hercegovini> [Accessed December 2021]
- 4 Benshoof J., 2014. The Other Red Line: The Use of Rape as an Unlawful Tactic of Warfare, Global Policy Volume 5, Issue 2, pp. 146-148. [online] Available at: <https://globaljusticecenter.net/documents/JB%20Global%20Policy%20Article.The%20Other%20Red%20Line%205.21.14.pdf>
- 5 BIRN, 2016. Bosnian War Rape Victims Struggle for Compensation. [online] Available at: <https://balkaninsight.com/2016/09/09/bosnian-war-rape-victims-struggle-for-compensation-09-09-2016/>
- 6 Delbyck K., 2017. Mitovi o silovanju na suđenjima za ratno seksualno nasilje, TRIAL International, [online] Available at: <https://trial.ba/wp-content/uploads/2018/01/20180112-TRIAL-Rape-Myths-BHS-WEB.pdf>
- 7 Husarić A., 2021. Bosnian War Rape Survivors 'Still Afraid to Speak Out'. [online] Balkan Insight. Available at: <https://balkaninsight.com/2021/03/03/bosnian-war-rape-survivors-still-afraid-to-speak-out/>



REFERENCES

- 8 ICMP, 2007. Guide For Civilian Victims of War. [online] Available at: <https://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/full%20text/europe/law%20on%20social%20protection%20protection%20of%20civilian%20victims%20of%20war%20and%20protection/guide%20to%20civilians%20victims%20of%20war%20in%20the%20federation%20of%20bih.pdf?vs=105>
- 9 Law on Victims of War Torture of RS. Official Gazette of RS (90/18), <https://www.paragraf.ba/dnevne-vijesti/02072020/02072020-vijest1.html>
- 10 Ministry for Human Rights and Refugees and Gender Equality Agency of B&H. 2018. Action Plan for the implementation of the UN Security Council Resolution 1325 "Women, Peace and Security" in Bosnia and Herzegovina for the period 2018-2022, [online] Available at: <https://arsbih.gov.ba/wp-content/uploads/2019/02/Akcioni-plan-ENG-KB-14.01..pdf>
- 11 Official Gazette of FBiH (54/04, 39/06, 14/09, 7/2014 - decision of Constitutional Court BiH, 45/16, 19/17 and 40/18). Law on Principles of Social Protection, Protection of All Civilian Victims of War and Protection of Families with Children. <https://advokat-prnjavorac.com/Zakon-o-osnovama-socijalne-zastite-zastite-civilnih-zrtava-rata-i-zastite-porodice-sa-djecom.html>
- 12 Official Gazette of RS (24/10). Law on Principles of Rights and Protection of Civilian Victims of War. [online] Available at: https://udas.rs.ba/cr/zakonipravilnici/Zakon_o_zastiti_civilnih_zrtava_rata.pdf
- 13 Sarajevo Times, 2017. New Law in RS: Victims of War Torture are entitled to monthly Compensation, [online] Available at: <https://sarajevotimes.com/new-law-rs-victims-war-torture-entitled-monthly-compensation/>
- 14 United Nations, n.d. World Conference of the International Women's Year 19 June-2 July 1975, Mexico City, Mexico. [online] <https://www.un.org/en/conferences/women/mexico-city1975>



REFERENCES

- 15** United States Institute of Peace (USIP), n.d. What is UNSCR 1325? An Explanation of the Landmark Resolution on Women, Peace and Security. [online] Available at: https://www.usip.org/gender_peacebuilding/about_UNSCR_1325 [Accessed December 2021]
- 16** Tripp A., 2020. UN Security Council Resolution 1325: Peacebuilding in Africa 20 years after its adoption. [online] Available at: <https://www.cmi.no/publications/7269-un-security-council-resolution-1325-peacebuilding-in-africa-20-years-after-its-adoption>
- 17** Women's Court n.d. About the Women's Court. [online] Available at: <https://zenskisud.org/en/o-zenskom-sudu.html>



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