

ALTERNATIVE CEDAW REPORT:

REPORT OF CIVIL SOCIETY ORGANIZATIONS ON IMPLEMENTATION OF THE CONCLUDING OBSERVATIONS AND RECOMMENDATIONS OF CEDAW COMMITTEE FOR BOSNIA AND HERZEGOVINA

2013-2017

Women in post-conflict situations

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Concluding observation number 9:

While recognizing the State party's efforts to improve the situation of women in post-conflict situations, the Committee is deeply concerned about: (a) The slow pace of prosecutions and very low level of conviction rates of perpetrators of sexual violence, which result in pervasive impunity, despite the implementation of the 2008 national war crimes prosecution strategy; (b) The inadequate definition, at both the State and entity levels, of acts of sexual violence as war crimes and crimes against humanity, in particular the elements of the crime of rape, which are not in line with international standards; the large number of cases at the district and cantonal levels, at which rape continues to be prosecuted as an ordinary crime, without taking into account the dimension of the armed conflict; and the parallel applicability of different criminal codes, resulting in inconsistent jurisprudence and lenient sentencing practices; (c) Long delays in adopting measures to address the needs of a large number of women victimized by the conflict; (d) The lack of adequate victim reparation in war crimes trials, where victims are being referred to initiate separate civil proceedings, while such claims can be submitted and ruled upon during criminal proceedings; (e) The deficiencies of witness protection measures in cases prosecuted at the district and cantonal levels, where the law on the witness protection programme is not applicable; (f) Women's inadequate and unequal access to compensation, support and rehabilitation measures for violations suffered during the war, such as enforced disappearances. These measures include sustained psychological and medical support as well as financial and social benefits, which are regulated differently in the entities; (g) The lack of measures taken to address the systematic stigmatization faced by women victims of wartime sexual violence, which hampers their access to justice and social reintegration.

Concluding observation number 10:

he Committee recommends that the State party: (a) Speed up the implementation of the national war crimes strategy and increase the number of prosecutions of war crimes cases by allocating more financial resources and investigative capacities to address the large backlog of cases; (b) Amend all relevant criminal codes to include a definition of wartime sexual violence in line with international standards, including a specific definition of rape as a war crime and a crime against humanity, in order to adequately reflect the gravity of the crimes committed and intensify its efforts to harmonize the jurisprudence and sentencing practices of its courts throughout the State party, by establishing effective cooperation mechanisms between prosecutors and courts competent to deal with war

crimes at all levels of the State party; (c) Expedite the adoption of pending draft laws and programmes designed to ensure effective access to justice for all women victims of wartime sexual violence, including adequate reparation, such as the draft law on the rights of victims of torture and civilian war victims, the programme for victims of sexual violence in conflict and torture (2013-2016) and the draft strategy on transitional justice aimed at improving access to justice; (d) Ensure the effective implementation of the new law on the witness protection programme and establish sustainable and operational witness protection measures at the district and cantonal levels; (e) Develop a comprehensive approach to improve the status and position of all women victims of the war, including by combating the stigma attached to sexual violence; and expand the provision of compensation, support and rehabilitation measures and benefits, and ensure equal access to such services for all women victims, irrespective of their place of residence. 11. The Committee is concerned about the lack of effectiveness of the Security Council resolution 1325 (2000) action plan regarding women's participation in peace, reconciliation and rehabilitation processes. 12. The Committee recommends that the State party ensure the full implementation of Security Council resolution 1325 (2000) through the State party's action plan and develop concrete measures to enhance the participation of women in decision-making processes relating to post-conflict policies and strategies, taking into account the needs of women and girls, in particular as regards their social rehabilitation and reintegration.

INTRODUCTION

In the concluding observations of the combined fourth and fifth periodic report, the UN Committee on the Elimination of Discrimination against Women commended the efforts of Bosnia and Herzegovina to improve the status of women in post-conflict situations. At the same time it expressed its deep concern over the long delays in the adoption of measures to address the needs of a large number of women victims of conflict, as well as because women neither have adequate and equal access to benefits, support and rehabilitation measures, nor financial and social assistance, which are regulated differently in entities, and has demanded that the State party submits a progress report.

At the request of the CEDAW Committee, the Parliamentary Assembly adopted a **“Information of Bosnia and Herzegovina for the UN CEDAW”**¹ on the measures taken which makes it evident that Bosnia and Herzegovina, despite the progress made in creating the legal framework, has yet failed to focus on specific problems that women face, as well as on improvement of their equal economic, political and social opportunities. The analysis of the aforementioned “Information of Bosnia and Herzegovina for the UN CEDAW” found that more effective monitoring and evaluation systems have not been established, which was one of the recommendations of an independent evaluation on the implementation of the Action Plan for implementing UN Resolution 1325 (2010-2013)².

¹ http://arsbih.gov.ba/wp-content/uploads/2015/08/150626_prilog_pisana_informacija_cedaw.pdf

² “An independent evaluation of the implementation of the Action Plan for the implementation of UNSCR 1325 was conducted in 2013 by the Institute for Inclusive Security in Washington, which, among other things, stated: Almost all indicators are quantitative in nature, which prevents monitoring of progress in achieving the strategic and medium-term

In the last four years a certain number of legislative initiatives were launched with the aim to harmonize the legal framework of Bosnia and Herzegovina with international standards and to finally provide victims the right to justice and reparation. Law on Witness Protection Program in BiH was adopted on April 29 2014. This law applies only to witnesses testifying before the State Court and not to those witnesses before district courts in the Republika Srpska, cantonal courts in the Federation of BiH and courts in the Brčko District. Due to the lack of political will, the following legislative initiatives were not adopted: National Strategy for Transitional Justice; The program to improve the status of survivors of sexual violence and labor sexual violence and the Law on the rights of victims of torture³, which was in 2016 reviewed in draft form by the Council of Ministers.⁴

Psychological support to witnesses and victims before, during and after the trial for war crimes is still insufficient and mostly depends on the support that comes from civil society and international donors, while institutional support is still lacking. Sustainability of Departments for providing support to witnesses during the trial for war crimes in different cities, established with the support of the European Union and UNDP, will be questionable if BiH authorities do not provide adequate financial and human resources to ensure future activities.

War victims are discouraged, because many lawsuits for compensation of non-pecuniary damages for compensation of the time forcibly spent in concentration camps are being rejected with the explanation of the absolute statute of limitations.⁵ Courts in the Republika Srpska, with the decision on the rejection of the claim, also deliver the decision on the payment of court fees with interests that range from 1000 to 5000 euros. In the other BiH entity, the Federation of Bosnia and Herzegovina, attorney and court costs are free of charge.

The first verdict which entitles victim of wartime sexual violence to the right of compensating damage through Criminal Procedure was adopted in June of 2015⁶. Therefore, this verdict is reassuring for all the victims and it opens up new possibilities for changes of courts and prosecutors' offices practice.

The legislation of the Republika Srpska does not recognize victims of rape and other forms of sexual violence as a special category of victims. The existing law on social benefits in the Republika Srpska defines strict deadlines that have already expired, and thus excludes a large group of potential applicants to seek their rights⁷. In addition, current procedures by

objectives, and qualitative institutional and general social change to achieve gender equality in the fields of defense and security ". See: http://arsbih.gov.ba/wp-content/uploads/2014/07/AP1325_bhs.pdf

³ This law is important for the systemic regulation of this area and ensuring equal access to rights and the right to compensation of victims of torture and other cruel, inhuman and degrading treatment.

⁴ <http://www.avaz.ba/clanak/243540/predvidena-izrada-zakona-o-pravima-zrtava-torture-u-bih?url=clanak/243540/predvidena-izrada-zakona-o-pravima-zrtava-torture-u-bih>

⁵ <http://www.glassrpske.com/drustvo/vijesti/Odbijena-prva-tuzba-za-nadoknadu-ratne-stete/lat/168521.html>

⁶ <http://www.nap.ba/new/vijest.php?id=13381>

⁷ Based on the obtained results of mobile teams that provide free legal aid to victims of sexual violence during the war, realized by Citizens Association Future in the municipalities of Šamac, Modriča, Vukosavlje, Brod, Doboj, Derventa, and with the support UNDP, there is a need for this kind of assistance because the deadlines victims have not yet achieved their basic

which victims can apply for the status of civilian victims of war are not fully transparent and sensitive to the psychological needs of the victims. Psychological damage is not recognized as a valid basis for obtaining income and this situation should be changed.

Despite the recommendation of the CEDAW regarding adequate funding and an adequate number of employees in the prosecutor's offices and courts, prosecutors' offices and courts still have inadequate number of employees. This issue should be addressed urgently in order to ensure timely and efficient processing of the remaining cases.

Since the general public does not consider state institutions sufficiently influential to change the dominant understanding of the conflict, the active involvement of civil society and the media is particularly important, in order to accelerate the process of seeking truth, justice, reparation and guarantees of non-repetition. Furthermore, it is necessary to develop effective mechanisms to track the implementation of laws, overcome structural barriers to equality for women i.e. management and supervisory positions. In this context, the situation in the Republika Srpska is much worse than in the rest of the country.

Recommendations

- Ensure the creation of a united legal framework and protocols at the national level for all victims and witnesses, in order to avoid a continuation of the current situation in which there is discrimination in access to rights and social benefits depending on the entity.
- Accelerate the adoption of draft laws and programs that are on hold, planned to ensure effective access to justice for women victims of sexual violence during the war, including adequate compensation, such as the draft Law on the rights of victims of torture and civilian victims of war, Program for Victims of Sexual Violence in conflict and torture and a draft of Transitional Justice Strategy, which aims to improve access to justice⁸
- Ensure effective implementation of the new Law on witness protection program and the establishment of sustainable operational witness protection measures at the level of district and cantonal courts. Financial resources for the implementation of laws and programs must be ensured, and the whole process needs to be coordinated with the other aforementioned legislative initiatives regarding war victims in Bosnia and Herzegovina.
- It is necessary to harmonize laws on civilian victims of war throughout the country by making amendments to the law in the Republika Srpska to introduce a special category for people who have suffered rape or other forms of sexual violence during the war, without prescribing any time limits for its implementation and with aim to

rights, are discouraged because the deadlines for submitting requests for acquiring the status have expired, they do not have adequate health care and treatment, live in extreme poverty , etc.

⁸ The process of establishing the facts, although crucial to ascertain the truth, cannot replace access to justice and compensation for victims of serious human rights violations, and their families must be guaranteed these rights independently of the adoption of the Strategy.

equalize status of rights of survivors of sexual violence in the war on the territory of Bosnia and Herzegovina

- BiH should remove existing barriers and develop a more effective system of protection of victims / witnesses that includes comprehensive legal, psycho-social support before, during and after the trial. Bosnia and Herzegovina must provide effective restitution and rehabilitation, particularly in terms of adequate housing for victims of rape and other forms of sexual violence; priorities in employment and access to education for their children, as well as the right to free legal, medical and psycho-social support;
- It is necessary to harmonize the approach in sensitizing professionals; their constant education and approximation of standards of their practice; among other things, to enable victims to exercise their rights to compensation during criminal proceedings.
- The state must support civil society organizations as a link between the witnesses / victims and institutions in the process of psycho-social support and legal assistance; and to provide funds for the work of these organizations, taking into account that they continue to provide quality treatment.
- Ensure effective mechanisms for active involvement of entity institutions and Brčko District which must provide real support to the entire process from the harmonization of laws to their implementation at all and especially at the local government levels.
- Encourage local communities through a multi-disciplinary and integrated approach to develop their own models of comprehensive protection and support to victims and witnesses of rape and other forms of sexual violence during the war; promoting good practice and sharing positive experiences