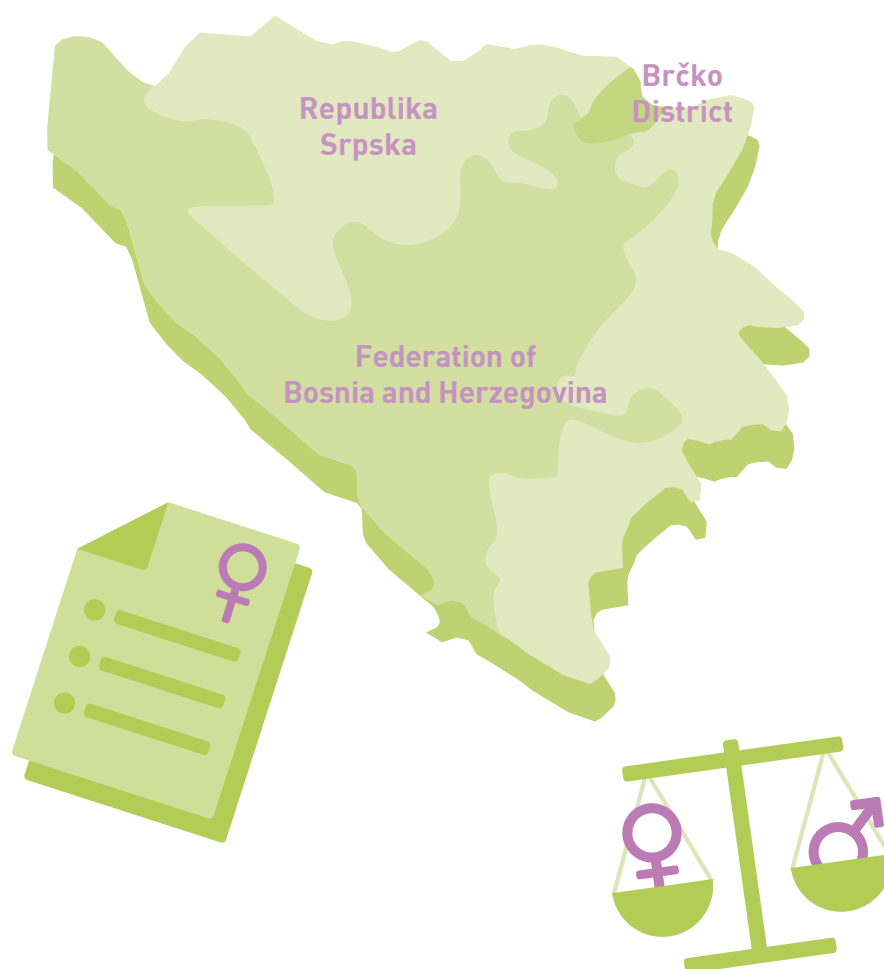


# MAPPING OF POLICIES AND LEGISLATION ON VIOLENCE AGAINST WOMEN AND THE ISTANBUL CONVENTION IN BOSNIA AND HERZEGOVINA

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# MAPPING OF POLICIES AND LEGISLATION ON VIOLENCE AGAINST WOMEN AND THE ISTANBUL CONVENTION IN BOSNIA AND HERZEGOVINA

## INTRODUCTION

Bosnia and Herzegovina (BiH) signed the Istanbul Convention (IC) in March 2013 and ratified the Convention in November 2013, without reservations.<sup>1</sup> As detailed throughout this report, although BiH's legislative framework generally complies with the IC, implementation is deficient, meaning that the state should increase its efforts to prevent violence against women and girls (VAWG), protect victims of VAWG, prosecute perpetrators of VAWG, and provide reparations for VAWG offences.

BiH is a society pervaded by deeply patriarchal attitudes and stereotypes regarding the position of men and women.<sup>2</sup> These archaic conceptions shape the incidence of and response to VAWG, which is often deemed acceptable behavior or a minor offence in comparison to other crimes.<sup>3</sup> While the ratification of the IC has led to increased recognition of VAWG as a problem, there is still resistance towards changing long-held views. As stated by an interviewee from the Center for Women's Rights in Zenica, "*there are no evident steps taken by state representatives.*"

<sup>1</sup> See BiH Ministry for Human Rights and Refugees, Framework Strategy for the Implementation of the Convention on Preventing Violence Against Women and Domestic Violence in Bosnia and Herzegovina [hereinafter "*Framework Strategy*"], 2015, pg 2. Available at [http://arsbih.gov.ba/wp-content/uploads/2015/10/CAHVIO\\_Strategy.pdf](http://arsbih.gov.ba/wp-content/uploads/2015/10/CAHVIO_Strategy.pdf)

<sup>2</sup> See Committee on the Elimination of Discrimination against Women, Concluding Observations on the combined fourth and fifth periodic reports of Bosnia and Herzegovina, Doc. No. CEDAW/C/BIH/CO/4-5, July 2013, para. 19; Sarajevo Open Center, *Annual Report on the State of Women's Rights in Bosnia and Herzegovina in 2013*, pgs. 4-5, 15. Available at [http://soc.ba/site/wp-content/uploads/2014/04/Annual-Report-on-Womens-Rights\\_WEB.pdf](http://soc.ba/site/wp-content/uploads/2014/04/Annual-Report-on-Womens-Rights_WEB.pdf)

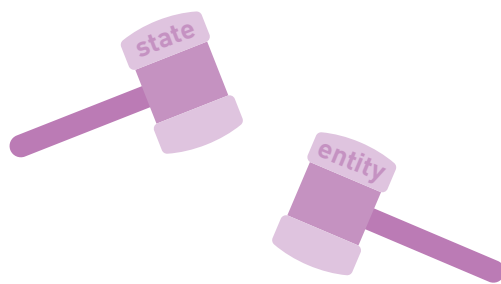
<sup>3</sup> See Sarajevo Open Center, *Annual Report on the State of Women's Rights in Bosnia and Herzegovina in 2013*, pg. 15; OBC Transeuropa, Domestic violence in a complex institutional setting, 2011. Available at <https://www.balkanicaucaso.org/eng/Areas/Bosnia-Herzegovina/BiH-Domestic-violence-in-a-complex-institutional-setting-89182>

The complex political structure of BiH hinders implementation of the IC. Following the 1992-1995 war in BiH, the Dayton Peace Accords divided the country into two autonomous entities (i.e. mini-states): the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska (RS). FBiH is further sub-divided into 10 cantons – self-governing territorial units. Subsequent negotiations resulted in the establishment of Brčko District, a self-governing territorial unit separate from RS and FBiH. Under Dayton, the entities<sup>4</sup> received significant power in relation to the state. The role of the entities is additionally strengthened by the fact that state institutions must proportionally represent the three main ethnic groups in BiH (Bosniak Muslims, Serbs, and Croats), a schema that forces cooperation but also frequently leads to deadlock.

In light of the structure established by Dayton, the state and entities are *jointly* responsible for regulating VAWG. At the state level, relevant documents include the Gender Equality Law,<sup>5</sup> the Law on the Prohibition of Discrimination,<sup>6</sup> the Gender Action Plan,<sup>7</sup> the “Framework Strategy” on the Implementation of the IC,<sup>8</sup> and the Criminal Code (CC) of BiH.<sup>9</sup> At the entity level, relevant documents include the FBiH and RS Laws on Protection from Domestic Violence,<sup>10</sup> the FBiH and RS Family Laws,<sup>11</sup> the FBiH and RS CCs,<sup>12</sup> the Brčko CC,<sup>13</sup> and the FBiH and RS Strategies on Combating Domestic Violence.<sup>14</sup>

The BiH Framework Strategy, applicable to the period 2015-2018, explicitly aims to harmonize its activities and objectives with the FBiH and RS Strategies.<sup>15</sup> The Framework Strategy stipulates that it covers all forms of VAWG that fall under the IC, yet does not identify specific offences. In accordance with article 3 of the IC, the Strategy condemns VAWG as discrimination against women, and defines VAWG as a manifestation of historically unequal power relations between women and men—and a violation of human rights. The entity level plans, though focused solely on intimate partner violence (IPV), also acknowledge that said violence results from discrimination and inequality.<sup>16</sup>

### The complex political structure of BiH hinders implementation of the IC.



<sup>4</sup> In this document, reference to the “entities” also encompasses Brčko District.

<sup>5</sup> BiH Law on Gender Equality – revised version (Official Gazette of BiH Vol. 32/10).

<sup>6</sup> Law on Prohibition of Discrimination in BiH (Official Gazette of BiH Vol. 59/09).

<sup>7</sup> BiH Gender Action Plan, 2013-2017.

<sup>8</sup> *Framework Strategy*.

<sup>9</sup> CC of BiH (Official Gazette of BiH Vol. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10, 47/14, 22/15, 40/15).

<sup>10</sup> FBiH Law on Protection from Domestic Violence (Official Gazette of FBiH Vol. 28/13); RS Law on Protection from Domestic Violence (Official Gazette of RS Vol. 102/12 and 108/13).

<sup>11</sup> FBiH Family Law (Official Gazette of FBiH Vol. 35/05, 41/05); RS Family Law (Official Gazette of RS Vol. 54/02, 41/08).

<sup>12</sup> Criminal Code of FBiH (Official Gazette of FBiH Vol. 36/03, 37/03, 21/04, 69/04, 18/05, 42/10 and 42/11); Criminal Code of RS (Official Gazette of RS Vol. 49/03, 108/04, 37/06, 70/06, 73/10 and 67/13).

<sup>13</sup> Criminal Code of Brčko District of BiH (Official Gazette of BD Vol. 10/03).

<sup>14</sup> Strategy to Combat Domestic Violence of the RS 2014-2019; FBiH Strategy on Preventing and Combating Domestic Violence 2013-2017.

<sup>15</sup> *Framework Strategy*, pg 9.

<sup>16</sup> Strategy to Combat Domestic Violence of the Republika Srpska 2014-2019, pg. 4; FBiH Strategy on Preventing and Combating Domestic Violence 2013-2017, pg. 10.

While the Agency for Gender Equality, a body within the BiH Ministry for Human Rights and Refugees, is the lead state-level implementing institution under the Framework Strategy,<sup>17</sup> the Dayton structure means that accomplishment of the Strategy's objectives largely hinges on the legislation and policies of entity institutions.<sup>18</sup> The Strategy thereby provides that the governments of RS and FBiH "shall determine the coordinating bodies for their respective territories"<sup>19</sup> and identifies a number of entity-level implementing partners.<sup>20</sup> In conflict with Article 8 of the IC, the Strategy omits discussion of how the budget for implementation should be divided amongst the state and entities, and offers no specific figures in this regard.

Due to the Dayton arrangement, VAWG prosecutions are divided between the entity and state judiciaries. The Court of BiH has jurisdiction over wartime sexual violence, as do courts in FBiH, RS, and Brčko. Entity level courts have sole jurisdiction over the remainder of VAWG crimes.

Information on VAWG in BiH is lacking. Although various entity and state level institutions are tasked with collecting different types of information on VAWG,<sup>21</sup> in some cases disaggregated by key factors, there is little coordination amongst responsible bodies and no overarching mechanism designed for this purpose.<sup>22</sup> As a result, the prevalence and nature of VAWG remains obscured, at odds with Article 11 of the IC. Correspondingly, representatives of women's NGOs cited the lack of available data as "an obstacle to working on violence against women".<sup>23</sup>

Although various entity and state level institutions are tasked with collecting different types of information on VAWG, in some cases disaggregated by key factors, there is little coordination amongst responsible bodies and no overarching mechanism designed for this purpose.



<sup>17</sup> Framework Strategy, pgs. 5, 34-52.

<sup>18</sup> It is worth noting that the government of RS did not approve passage of the Strategy.

<sup>19</sup> Framework Strategy, pg. 6.

<sup>20</sup> Id, pgs. 5, 34-52.

<sup>21</sup> See Gender Action Plan, provision II.6; RS Law on Protection from Domestic Violence, articles 11, 34; FBiH Law on Protection from Domestic Violence, article 40; Framework Strategy, pgs. 28-29, 51-52; Natalija Petric and Nenad Galic, Osnovna Studija [hereinafter "Osnovna Studija"], 5 December 2015, pgs. 36-39. Available at <http://www.potpisujem.org/doc/1732fddeeb070e55dfe6e0ce3e44193.pdf>

<sup>22</sup> See Framework Strategy, pg. 30; Committee on the Elimination of Discrimination against Women, *Concluding Observations on the combined fourth and fifth periodic reports of Bosnia and Herzegovina*, para. 21; Human Rights Committee, *Concluding Observations on the third periodic report of Bosnia and Herzegovina*, Doc. No. CCPR/C/BIH/CO/3, April 2017, para. 27; Committee against Torture, *Concluding Observations on the Sixth Periodic Report of Bosnia and Herzegovina*, Doc. No. CAT/C/BIH/CO/6, December 2017, paras. 32-33. It is worth noting that as a result of the aforementioned problems with data collection, there is little information on femicide.

<sup>23</sup> See Interview with representative of United Women Banja Luka, 22 June 2018. See also Aleksandra Petric and Dzenana Radoncic, *Analytical Report: Analysis of Monitoring of the Criminal and Minor Offence Proceedings in the Area of Protection from Gender Based Violence in the Bosnia and Herzegovina [hereinafter Analytical Report]*, 2017, pg. 94. Available at [http://www.sigurnamreza.ba/upload/documents/ANALYTICAL-REPORT-2017-UW\\_CLAW-final.pdf](http://www.sigurnamreza.ba/upload/documents/ANALYTICAL-REPORT-2017-UW_CLAW-final.pdf)

## INTIMATE PARTNER VIOLENCE

**DATA AND RESEARCH** ● Intimate partner violence is all too prevalent in BiH. According to a 2013 study on VAWG in BiH, more than half of women surveyed had experienced at least one form of violence from the age of 15 onward, with IPV being the most common — and evident in 71.5 per cent of cases.<sup>24</sup> Survivors had been subjected to both psychological and physical violence, sometimes in concurrence.<sup>25</sup>

**LEGISLATIVE FRAMEWORK** ● The entity courts in RS and FBiH are in charge of processing cases of IPV. Both entity criminal codes proscribe IPV. The entity Laws on Protection from Domestic Violence (LPDVs) further regulate IPV.

### FBiH CC

#### Definition

*Use of violence, "threatening behaviour, or mental cruelty" that violates the physical or psychological health of a member of one's family or household.*

#### Aggravated form definition

*Use of dangerous weapons, the infliction of serious physical or psychological injury, abuse of a child, and/or the death of a victim (particularly when the perpetrator had previously mistreated said victim).*

#### Safety measures

*Requiring that the perpetrator forfeit dangerous weapons.*

#### Sentence

A fine or imprisonment of up to one year for the commission of this crime against a member of one's family, and a fine or imprisonment of up to three years for commission of the crime against a member of one's household.

#### Sentence

Between 3 months and 15 years, or in the most serious cases, "long-term imprisonment" of between 21 and 45 years.

#### Sentence for violation

No penalty but further safety measures and penalties prescribed in the LPDV below.

### FBiH LPDV

#### Protection Measures

Forcing a perpetrator to vacate the household in question, issuing a restraining order, banning the perpetrator from harassing or stalking the victim, and temporarily detaining the perpetrator.

#### Emergency Protection Measures

The court must pronounce judgment on the protective measures of removal from a household, the issuance of a restraining order, and a ban on harassing and/or stalking the victim within 12 hours of receipt of the request.

#### Sentence for violation

A fine of 500-750 euros.

#### Sentence for violation

A fine of 500-700 euros.

<sup>24</sup> Gender Equality Agency, *Prevalence and Characteristics of Violence against Women in BiH* (hereinafter "2013 Study"), June 2013, pgs. 13, 51. Available at [http://www2.unwomen.org/-/media/field%20office%20eca/attachments/publications/country/bosnia/prevalency\\_study%20vaw%20in%20bih.pdf?la=en&vs=3418](http://www2.unwomen.org/-/media/field%20office%20eca/attachments/publications/country/bosnia/prevalency_study%20vaw%20in%20bih.pdf?la=en&vs=3418)

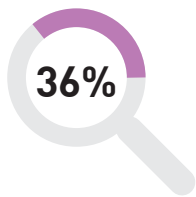
<sup>25</sup> *Id.*, pgs. 13, 48.

<b>RS CC</b>	<p><b>Definition</b></p> <p><i>Use of “violence, insolent or arrogant behaviour” that, by infringing upon the “peace, life, health or mental health” of a family member/and or household member, causes physical or psychological injury.</i></p>	<p><b>Aggravated form</b></p> <p><i>Use of dangerous weapons, the infliction of serious physical or psychological injury, abuse of a child, and/or the death of a victim (particularly when the perpetrator had previously mistreated said victim).</i></p>	<p><b>Safety Measures</b></p> <p><i>Prohibiting a perpetrator from “approaching or contacting” a victim, removing the perpetrator from a joint household, and requiring that the perpetrator forfeit dangerous weapons.</i></p>
	<p><b>Sentence</b></p> <p>A fine or imprisonment between a term of three months and three years.</p>	<p><b>Sentence</b></p> <p>Between 6 months and 15 years, or in the most serious cases, “long-term imprisonment” of between 21 and 45 years.</p>	<p><b>Sentence for Violation</b></p> <p>Revocation of suspended sentence/conditional release; imprisonment.</p>

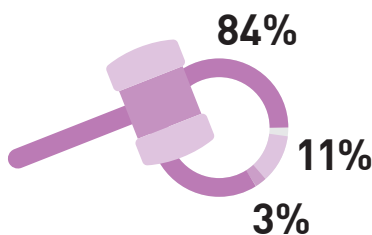
While IPV in FBiH is proscribed solely as a criminal felony, IPV in RS can be prosecuted as either a criminal felony under the RS CC or a misdemeanor under the RS LPDV, as described below.

<b>RS LPDV</b>	<p><b>Misdemeanor Offences</b></p> <p>Verbal threats, economic manipulation, property damage, and stalking.</p>	<p><b>Protection Measures</b></p> <p>Forcing a perpetrator to vacate the household in question, issuing a restraining order, banning the perpetrator from harassing or stalking the victim, and temporarily detaining the perpetrator.</p>	<p><b>Emergency Protection Measures</b></p> <p>Removal of perpetrator of domestic violence from the apartment, house or other residential dwelling and/or issuing a restraining order and prohibiting the perpetrator from contacting the victim of domestic violence. Emergency protective measures must be imposed no later than 24 hours after the request and cannot be imposed for longer than 30 days.</p>
	<p><b>Sentence</b></p> <p>Measures of warning, protective measures, educational measures, fines, and imprisonment.</p>	<p><b>Sentence for Violation</b></p> <p>Fines, revocation of suspended sentence/conditional release; imprisonment.</p>	<p><b>Sentence for Violation</b></p> <p>Fines, revocation of suspended sentence/conditional release; imprisonment.</p>

Brčko District has a CC containing similar provisions on IPV, but has no LPDV. Though the laws detailed above provide the judiciary with the tools to adequately sanction IPV, implementation is sorely lacking. In RS, for example, prosecutors and judges frequently charge perpetrators with misdemeanors even when the given offences qualify as criminal felonies. A recent monitoring report found that in 2016 the number of misdemeanor IPV cases was higher than the number of criminal offence IPV cases, and that out of 76 misdemeanor IPV cases monitored in RS, 27—or 36%—should have been characterized as criminal offences because the violence in question resulted in physical injuries.<sup>26</sup>



**In 2016, out of 76 misdemeanor IPV cases monitored in RS, 27—or 36%—should have been characterized as criminal offences because the violence in question resulted in physical injuries.**



**With respect to the IPV cases monitored during the relevant period in FBiH, courts imposed warning measures: predominantly suspended sentences in 84% of the cases, fines in 3% of the cases and prison sentences in only 11% of the cases.**

Moreover, entity courts too often either fail to recognize the criminal offence of IPV in its aggravated form, or characterize the offence as aggravated but in a form less serious than warranted by the facts.<sup>27</sup> These erroneous qualifications of IPV can lead to low sanctions.<sup>28</sup> The aforementioned analytical report, for example, found that with respect to the IPV cases monitored during the relevant period in FBiH, courts imposed warning measures—predominantly suspended sentences—in 84 % of the cases, fines in 3 % of the cases and prison sentences in only 11 % of the cases.<sup>29</sup> Likewise, IPV cases brought before RS criminal courts most commonly resulted in suspended prison sentences and fines: even multiple recidivists typically received suspended sentences.<sup>30</sup> In IPV misdemeanor proceedings in RS, courts exclusively imposed protection measures and fines, with no prison sentences issued during the monitoring period.<sup>31</sup> As stated by Sabiha Husic, the director of women's CSO Medica Zenica, *“such penalties reflect broader societal views that IPV is a family problem and not serious.”* It is worth noting that part of the burden for ensuring effective IPV prosecutions falls on the police, who sometimes treat IPV as a domestic problem and do not gather the requisite evidence.

In addition to imposing inadequate sanctions for IPV, courts regularly deny IPV survivors the compensation they are due within the criminal justice process. Under the RS, FBiH, and Brčko Criminal Procedure Codes (CPCs), injured parties who have suffered material and/or non-material damage are authorized to file compensation claims as part of criminal trials.<sup>32</sup> In reality, however, survivors are almost never awarded compensation. Prosecutors and judges, though obligated

<sup>26</sup> *Analytical Report*, pgs. 34-35.

<sup>27</sup> *Id.*, pgs. 19-20, 42, 60-61, 63-64, 86; Organization for Security and Cooperation in Europe (OSCE), *Ensuring Accountability for Domestic Violence*, 2011, pgs. 29-30. Available at <https://www.osce.org/bih/106970?download=true>

<sup>28</sup> See Human Rights Council Twenty-third Session, *Report of the Special Rapporteur on Violence against Women, its Causes, and Consequences*, Doc. No. A/HRC/23/49/Add.3, 24 June 2013, paras. 86-87; Committee on the Elimination of Discrimination against Women, *Concluding Observations on the combined fourth and fifth periodic reports of Bosnia and Herzegovina*, para 21; OSCE, *Ensuring Accountability for Domestic Violence*, pgs. 18-21, 26-28, 32-33.

<sup>29</sup> *Analytical Report*, pg. 87.

<sup>30</sup> *Id.*, pgs. 21-22.

<sup>31</sup> *Id.*, pg. 45.

<sup>32</sup> FBiH CPC, Articles 207-209; RS CPC, Articles 103-105; Brčko CPC, Articles 193-195.



to inform survivors about their right to compensation, routinely fail to do so, and even women aware of the possibility do not receive the legal aid necessary to undertake the highly technical compensation claim process. The 2016 monitoring report found that courts did not award compensation in a single IPV case.<sup>33</sup>

Correspondingly, survivors often do not receive the support and protection they are due under the entity CPCs and Laws on Protection of Witnesses Under Threat and Vulnerable Witnesses (Protection Laws), which - respectively - require courts to protect vulnerable witnesses and ensure that they receive psychological, social, and legal assistance.<sup>34</sup> The 2016 monitoring report determined that no IPV survivors were designated as vulnerable witnesses in cases monitored across FBiH, RS, and Brčko, despite the fact that women subjected to abuse would naturally fall within this category. Survivors thus did not obtain any form of protection. A representative of women's CSO United Women Banja Luka (UWBL) expressed dismay at the courtroom treatment of IPV survivors, stating: "prosecutors and judges do not recognize that women need special measures."

Entity criminal courts rarely impose available safety measures in criminal proceedings, risking further violence against IPV survivors.<sup>35</sup> On the other hand, while misdemeanour courts are somewhat responsive to issuing the protective measures provided for by the LPDVs, criminal proceedings *are almost never* initiated in conjunction with these measures, an indication that some professionals fail to understand that protection does not preclude criminal charges.<sup>36</sup> Furthermore, although the LPDVs authorize misdemeanour courts to levy emergency safety measures so as to ensure the immediate protection of IPV survivors, such proceedings are too often delayed, leaving women

vulnerable.<sup>37</sup> Mima Dahic of Vive Zene, described an ongoing case in which a female survivor of IPV applied for urgent protection measures three months ago and was recently informed that the prosecutor's office had yet to collect paperwork from relevant agencies in order to submit the request. The woman continues to wait, exposed to the threat of more violence. According to an interviewee from the Center for Women's Rights in Zenica, problems with the implementation of protection measures stem not from the legal framework but from "*the lack of a sensitized, victim tailored approach and sporadic monitoring of implementation by responsible institutions.*" Tellingly, courts only occasionally sanction perpetrators for violating protective measures. The recent experience of a woman in Central Bosnia reflects many of the above failings of the criminal justice system.<sup>38</sup>

**Prosecutors and judges, though obligated to inform survivors about their right to compensation, routinely fail to do so, and even women aware of the possibility do not receive the legal aid necessary to undertake the highly technical compensation claim process.**



<sup>33</sup> Analytical Report, pgs. 29, 31, 75-76, 96.

<sup>34</sup> Law on Protection of Witnesses under Threat and Vulnerable Witnesses [BiH Official Gazette, Vol. 3/03, 21/03, 61/04, 55/05], Articles 3, 5-6, 8, 10, 13[2]. The entity laws mirror this state law; FBiH CPC, Article 282; RS CPC, Article 283; Brčko CPC, Article 262[3].

<sup>35</sup> Analytical Report., pgs. 19-20, 42-43, 66, 87.

<sup>36</sup> See *id.*, pgs. 94, 96; Report of the Special Rapporteur on Violence against Women, its Causes, and Consequences, para. 85.

<sup>37</sup> See Analytical Report, pgs. 4, 92, 94.

<sup>38</sup> Interview with representative of United Women Banja Luka.

## CASE

The woman's partner severely beat her in the presence of their child. While the fact that the child witnessed the incident should have resulted in a charge of aggravated IPV, the prosecutor mischaracterized the offence as ordinary IPV. Moreover, even though the perpetrator was threatening the victim during the proceedings and had previously been convicted for violence against the same woman, the court did not impose a protective measure. Subsequently, the perpetrator showed up at the woman's house, broke in, beat her, and took their child. The court still did not impose a protective measure. When the woman finally testified, she had no psychological assistance and the perpetrator, who was allowed to be in the courtroom, verbally attacked her during her testimony.



**DIVORCE CASES** ● Divorce cases IPV victims who leave their partners and institute divorce proceedings face further obstacles. Extant laws and practices do not adequately prioritize the woman's safety interests and underestimate the harm that IPV wreaks on children.<sup>39</sup> The entity family laws provide for divorce in the event of the marital relationship becoming "seriously and permanently disturbed", a provision that covers instances of IPV.<sup>40</sup> In the event that children are involved, the court decides which parent a child should live with. Although the legislation identifies a range of scenarios that would justify a court's decision to remove a child from parental custody, it omits mention of IPV, evincing the aforementioned belief that IPV is not a serious problem. Correspondingly, before filing for divorce, spouses with children are obligated to undertake a mediation procedure – in RS, this is true in IPV cases and is not in line with Article 48 of the IC. While the FBiH Law contains a provision authorizing the absence of a spouse from mediation in the event of IPV, FBiH CSWs conducting such sessions do not always take the woman's needs into account, "especially in smaller communities where

perpetrators have influence."<sup>41</sup> After divorces are finalized, CSWs routinely encourage contact between husbands and children, pushing for family unification despite the presence of IPV.<sup>42</sup>

**SERVICES** ● Outside of the courtroom, pursuant to the entity LPDVs, the government must provide a range of services to IPV survivors, including legal aid, psychological assistance, shelter, health care, and social protection. In reality, implementation is poor and most women cannot access these services. Each Law designates certain institutions as responsible for responding to IPV; the police, prosecutors' offices, centers for social work (CSWs), courts, CSOs, health care bodies, and so on. Given the level of coordination required, FBiH and RS have both established multi-sector referral mechanisms. Under the FBiH LPDV, for example, all relevant bodies must "sign a protocol on co-operation for the territory of one or more municipalities and regulate mutual rights and obligations in the procedure of reporting cases of domestic violence, protecting victims of domestic violence, and working with violent persons." As a result, every canton in FBiH has ratified such a

<sup>39</sup> See *Report of the Special Rapporteur on Violence against Women, its Causes, and Consequences*, paras. 70-74.

<sup>40</sup> Family Law of FBiH (Official Gazette of FBiH Vol. 35/05, 41/05), Article 41; Family Law of RS (Official Gazette of RS Vol. 54/02, 41/08), Article 52(1).

<sup>41</sup> Interview with Mima Dahic. See also *Report of the Special Rapporteur on Violence against Women, its Causes, and Consequences*, para. 70.

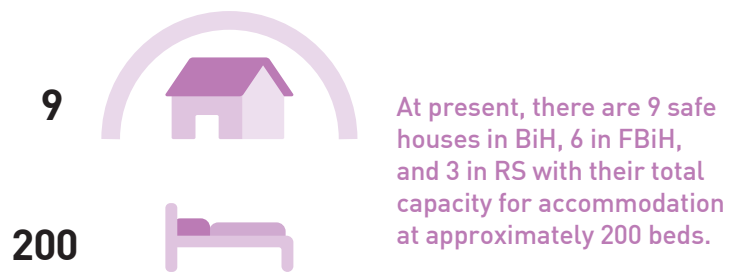
<sup>42</sup> Interview with Mima Dahic. See also *Report of the Special Rapporteur on Violence against Women, its Causes, and Consequences*, para. 72.

protocol and some municipalities—smaller territorial units within cantons—have their own protocols as well. Meanwhile, although the RS LPDV does not mandate the establishment of a protocol, relevant ministries have signed an entity level document and various municipalities have signed their own local protocols.<sup>43</sup> Additionally, the RS LPDV establishes a “Council for the Prevention of Violence in the Family and Family Unit” to supervise and assess the implementation of IPV measures and improve coordination. While Brčko has no LPDV, key institutions - in a process instigated by women’s CSOs - recently signed a protocol on IPV.

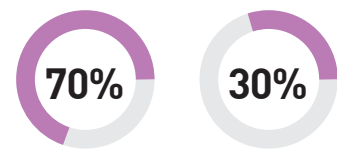
designated CSOs, with their total capacity for accommodation at approximately 200 beds.<sup>47</sup> Women’s CSOs describe this number as grossly insufficient.<sup>48</sup> The RS and FBiH LPDVs require the entity level government to provide 70 percent of the funds for safe houses and the local government 30 percent. The Foundation for Local Democracy (FLD) safe house, however, is the only such institution with consistent government funding (from Sarajevo Canton).<sup>49</sup> Sabiha Husic of Medica Zenica noted that the organization’s safe house receives only 10 percent of its financing from the entity government and that cantonal funding is inconsistent.

Improvements in coordination have led to positive practices. In RS, for example, the police, CSWs, and women’s CSOs have created mobile teams for IPV cases, jointly visiting the given family home and sending a report to the prosecutor’s office when needed.<sup>44</sup> Correspondingly, the RS and FBiH governments have instituted 24 hour SOS lines for IPV victims.<sup>45</sup> Calls are transferred to the CSO presiding over the area from which the call is made. The CSO then contacts other institutions as deemed necessary. Despite this progress, women’s CSOs face resistance in the implementation of protocols and distribution of responsibility. As noted by Mima Dahic of Vive Zene, “it’s the CSOs working with victims that are trying to keep the multi-disciplinary approach alive and make sure all institutions work together.” In particular, the lack of dedicated government funding has undermined the protocols’ effectiveness and the availability of services.

The system of safe houses is an illustrative example. At present, there are 9 safe houses in BiH, 6 in FBiH, and 3 in RS.<sup>46</sup> The safe houses, which offer psychological, social, and legal aid, are run by



The RS and FBiH LPDVs require the entity level government to provide 70 percent of the funds for safe houses and the local government 30 percent.



	Entity level government	Local government
Medica Zenica	10%	inconsistent
Vive Zene	<10%	10-15%

<sup>43</sup> See Framework Strategy, pg. 19.

<sup>44</sup> Report of the Special Rapporteur on Violence against Women, its Causes, and Consequences, para. 69.

<sup>45</sup> Framework Strategy, pg. 18.

<sup>46</sup> Framework Strategy, pgs. 17-19; USAID, Gender Analysis Report for Bosnia and Herzegovina, November 2016, pg. 86. Available at <http://www.measurebih.com/uiimages/Edited20GA20Report20MEASURE-BiH.pdf>

<sup>47</sup> Sarajevo Open Center, Annual Report on the State of Women’s Rights in Bosnia and Herzegovina in 2016, February 2016, pgs. 35-36. Available at [http://soc.ba/site/wp-content/uploads/2016/02/ENG\\_narand.izv\\_FINAL\\_web.pdf](http://soc.ba/site/wp-content/uploads/2016/02/ENG_narand.izv_FINAL_web.pdf); Framework Strategy, pg. 18.

<sup>48</sup> Troublingly, CSWs - which are often not attuned to the needs of IPV survivors and/or more concerned with government expenditures than with women’s safety - must approve referrals to safe houses.

<sup>49</sup> Interview with representative of FLD, July 13 2018.

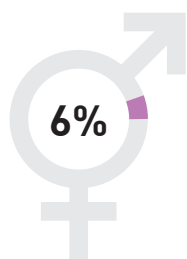
Mima Dahic of Vive Zene stated that the Vive Zene safe house receives less than 10 percent of its financing from Tuzla canton and approximately 10 to 15 percent from the FBiH government. In Sabiha Husic's words, "it's a constant struggle for safe houses to survive and we all have to rely heavily on international donations." The situation is particularly dire in FBiH, where several safe-houses have almost closed.<sup>50</sup> Government institutions have also failed to provide the requisite funding for legal aid and SOS hotlines, leaving CSOs to come up with the money.

Lastly, it is worth noting that BiH service providers do not typically offer specialized care to particularly disadvantaged groups of IPV victims, such as women living with disabilities, LGBT individuals, and Roma women. Women's CSO interviewees commented that although they receive referrals from smaller organizations focused on specific populations (with the result that some safe houses train employees on how to interact with such populations), they themselves do not run targeted programs. Likewise, neither entity LPDV provides heightened protection to IPV victims facing multiple layers of discrimination.

## SEXUAL VIOLENCE

**DATA AND RESEARCH** ● There is little information on the prevalence and nature of sexual violence in BiH. The 2013 study on VAWG found that 6 percent of women had experienced sexual violence during their adult lives (although this number includes wartime violence, which will be discussed in more depth below).<sup>51</sup>

**LEGISLATIVE FRAMEWORK** ● Legislation on sexual violence partially complies with the IC. Under the RS, FBiH, and Brčko CCs, rape is defined as compelling another person to "*sexual intercourse or any other sex act by force or threat of immediate physical attack upon that person or upon someone close to that person.*"<sup>52</sup> The codes all identify aggravated forms of rape, such as when the offence is perpetrated against a minor, perpetrated by multiple individuals, perpetrated in a particularly cruel manner, and/or perpetrated with hatred. The codes also provide for multiple forms of sexual violence, including sexual intercourse with a helpless person, sexual abuse of a child, and sexual intercourse by abuse of position.



The 2013 study on VAWG found that 6 percent of women had experienced sexual violence during their adult lives.

In certain instances, however, the laws fall short of IC standards. The definition of rape, for example, establishes the requirement of "force or threat of force", excluding other types of non-consensual intercourse. The codes do not specifically

<sup>50</sup> See *Gender Analysis Report for Bosnia and Herzegovina*, pg. 89; *Annual Report on the State of Women's Rights in Bosnia and Herzegovina in 2016*, pgs. 36-38.

<sup>51</sup> *2013 Study*, pg. 13

<sup>52</sup> RS CC, Article 193(1); FBiH CC, Article 203(1); Brčko CC, Article 200.

criminalize marital rape. Meanwhile, neither the FBiH CC nor Brčko CC proscribes offences such as female genital mutilation, forced sterilization, and forced marriage. Encouragingly, in 2017, the RS CC was amended to include these offences.<sup>53</sup>

Under the RS CC, courts can punish perpetrators for sexual violence with sentences between 6 months and 15 years or, in the most serious cases, long-term imprisonment of between 21-45 years. The FBiH CC sets the punishment for sexual violence at between 1 and 15 years or, in the most serious cases, life imprisonment. The Brčko CC authorizes a sentence between 1 to 15 years or, in the most serious cases, between 21-45 years. Statutes of limitations for sexual violence crimes vary based on the severity of the offence, but are not in line with Article 58 of the IC; for ordinary rape, the statute of limitations is a mere 5-15 years and does not ensure that minor survivors can initiate proceedings once they reach the age of majority.

In court, sexual violence survivors are protected by general measures set forth by the Protection Laws and the CPCs as well as by prohibitions specific to sexual violence cases; namely, parties are barred from asking questions or presenting evidence about the victim's previous sexual experiences.<sup>54</sup> Although sexual violence survivors qualify as vulnerable witnesses under the Protection Laws, the aforementioned monitoring study found that they infrequently receive psychological, social, or legal assistance.<sup>55</sup>

In contrast to cases of IPV, courts are less inclined to impose suspended sentences for sexual violence and sanctions generally fall within the legislative framework.<sup>56</sup> Nonetheless, courts routinely fail to take all aggravating circumstances into account, instead prioritizing mitigating

circumstances.<sup>57</sup> In an attempted rape case in Banja Luka, for example, the court listed the defendant's *family relationship* with the victim as a mitigating circumstance.<sup>58</sup>

**SERVICES** ● There are no BiH institutions dedicated to providing services to rape survivors.<sup>59</sup> As stated by a representative of United Women Banja Luka, for example, safe houses “are for all victims of gender-based violence and never focused only on sexual violence.” The absence of rape crisis centers is not in line with Article 25 of the IC.



Statutes of limitations for sexual violence crimes vary based on the severity of the offence, but are not in line with Article 58 of the IC.



	Punishment for sexual violence	
RS CC	<b>6 months - 15 years</b>	<b>21 - 45 years</b>
FBiH CC	<b>1 - 15 years</b>	<b>21 - 45 years</b>
Brčko CC	<b>1 - 15 years</b>	<b>21 - 45 years</b>
IC	<b>5-15 years</b>	

<sup>53</sup> Analytical Report, pg. 11.

<sup>54</sup> RS CC, Article 279(1); FBiH CC, Article 279(1) ; Brčko CPC, Article 264.

<sup>55</sup> Analytical Report, pgs. 28-29, 74.

<sup>56</sup> Analytical Report, pgs. 24, 43, 81-82.

<sup>57</sup> Id.; Framework Strategy, pg. 25.

<sup>58</sup> Analytical Report, pg. 24.

<sup>59</sup> A representative of the FLD noted that for several years, part of FLD's shelter was dedicated to sexual violence victims.

## CONFLICT-RELATED SEXUAL VIOLENCE (CRSV)

During the 1992-1995 Bosnian war, it is estimated that 20-50,000 women were raped. Many were held in so-called “rape camps”, which were run by forces on all sides. While there has been progress with respect to the prosecution of CRSV,<sup>60</sup> the vast majority of survivors have been left without redress.

The processing of war crimes trials in BiH is split between the entity and state level judiciaries, which operate in parallel and are subject to different legislation, jurisprudence, and practices. At the state level court, the Court of BiH, CRSV is prosecuted under two sentencing regimes. Per Article 172 of the BiH Criminal Code (BiH CC), CRSV - including rape or an equivalent sexual act, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity - is proscribed as a crime against humanity. The Court of BiH can sentence perpetrators of such offences to between 10 and 45 years in prison.

Since the European Court of Human Rights' 2013 decision in *Maktouf v. Bosnia and Herzegovina*,<sup>61</sup> the Court of BiH has exclusively applied the Criminal Code of the Socialist Federal Republic of Yugoslavia (SFRY CC) to war crimes against civilians and war crimes against prisoners of war. Article 142 of the SFRY CC criminalizes forcible prostitution and rape as war crimes against civilians, while Article 144 criminalizes inhuman treatment and serious injury to bodily integrity as war crimes against prisoners of war. These offences can be punished with sentences between 5 and 15/20 years. Entity courts solely use the SFRY CC and are at present only processing war crimes against civilians and war crimes against prisoners of war, not crimes against humanity.

Recent amendments to the BiH CC have brought state-level legislation in line with international standards. Whereas the code previously required that the prosecutor prove force or the threat of force, in 2015 the BiH legislature - recognizing that wartime circumstances are inherently coercive - eliminated this condition. Unfortunately, the SFRY CC does not specify that the coercion engendered by war is sufficient evidence of non-consent.



<sup>60</sup> OSCE, *Towards Justice for Survivors of Conflict-Related Sexual Violence in Bosnia and Herzegovina: Progress before Courts in BiH 2014-2016* (hereinafter “*Towards Justice*”), June 2017, pgs. 6-8. Available at <https://www.osce.org/mission-to-bosnia-and-herzegovina/324131?download=true>

<sup>61</sup> For more on the impact of *Maktouf v. Bosnia and Herzegovina*, see Francesco de Sanctis, *Reconciling Justice and Legality: a Quest for Fair Punishment in Cases on Bosnian Atrocity Crimes*, *Journal of International Criminal Justice*, 2014.

As referenced above, prosecutions for CRSV have increased over the past several years, reflecting the efforts of the BiH justice sector and international community.<sup>62</sup> In many such cases, however, sanctions have been disappointing and, particularly at the entity level, below statutory minimums.<sup>63</sup> Meanwhile, plea bargaining practices with respect to CRSV have been problematic; in two recent cases involving the wartime rape of minors, perpetrators were ordered to compensate their respective victims and subsequently sentenced to just one year in prison, which they promptly converted to payment of a fine.<sup>64</sup> The men will never see jail time for their wartime crimes.

Although protection of and support for CRSV survivors participating in criminal proceedings is inadequate, a United Women Banja Luka representative notes that “there has been improvement in recent years and victims generally receive better treatment than victims of IPV or peacetime sexual violence.” CRSV survivors, for example, are increasingly recognized as vulnerable witnesses and thus receive psychological assistance prior to trial and in court.<sup>65</sup> These practices are more common at the state level than at the entity level, where witness support departments struggle with funding.<sup>66</sup>

In another positive development, CRSV survivors are routinely permitted to testify using pseudonyms or audio-visual distortion, protecting their identities.<sup>67</sup> Moreover, in accordance with the aforesaid provisions applicable to sexual violence

**In many such cases, however, sanctions have been disappointing and, particularly at the entity level, below statutory minimums.**

cases, parties are not permitted to present evidence or question the victim about his or her prior sexual experiences. An additional clause applicable solely to CRSV cases - per the aforementioned concept of wartime coercion - stipulates that the consent of the victim cannot be used in favor of the defendant.<sup>68</sup>

There is no statewide reparations scheme for wartime survivors. Political initiatives to create such a system have repeatedly failed due to funding issues and disputes over which side should bear responsibility. As a result, the availability of court-ordered compensation and social pensions is all the more important. Troublingly, each option is riddled with obstacles.<sup>69</sup> With respect to court ordered compensation, provisions in the state and entity level CPCs allow injured parties to file claims based on material and non-material damages.<sup>70</sup> Due to resistance within the judiciary, however, it was not until 2015 that a CRSV survivor was awarded compensation in criminal proceedings.<sup>71</sup> While this case set the precedent for subsequent positive verdicts,<sup>72</sup> difficulties with enforcement have prevented survivors from obtaining awards.<sup>73</sup>

<sup>62</sup> *Towards Justice*, pgs. 5-6.

<sup>63</sup> See Amnesty International, *Last Chance for Justice for Bosnia's Wartime Rape Survivors*, September 2017, pgs. 11, 26. Available at <https://www.amnesty.org/download/Documents/EUR6366792017ENGLISH.PDF>; Committee against Torture, *Concluding Observations on the Sixth Periodic Report of Bosnia and Herzegovina*, para. 16.

<sup>64</sup> *Towards Justice*, pgs. 72-73.

<sup>65</sup> *Towards Justice*, pgs. 74-78; TRIAL International, *Rape Myths in Wartime Sexual Violence Trials* [hereinafter “*Rape Myths*”], January 2018, pgs. 66-68. Available at <https://trialinternational.org/wp-content/uploads/2018/01/20180112-TRIAL-Rape-Myths-ENG-WEB.pdf>; *Analytical Report*, pg. 29.

<sup>66</sup> *Towards Justice*, pgs. 80-81; *Rape Myths*, pgs. 66-68.

<sup>67</sup> *Towards Justice*, pg. 75.

<sup>68</sup> BiH CPC, Article 264[3]; FBiH CPC, Article 279[3]; RS CPC, Article 279[3]; Brčko CPC, Article 264[3].

<sup>69</sup> See Amnesty International, *Last Chance for Justice for Bosnia's Wartime Rape Survivors*, pgs. 33-42.

<sup>70</sup> BiH CPC, Articles 193-195; FBiH CPC, Articles 207-209; RS CPC, Articles 103-105.

<sup>71</sup> See TRIAL International, *Compensating Survivors in Criminal Proceedings: Perspectives from the Field* [hereinafter “*Compensating Survivors*”], November 2016, pgs. 9-10. Available at [https://trialinternational.org/wp-content/uploads/2016/11/TRIAL-International\\_compensation-publication\\_EN\\_web.pdf](https://trialinternational.org/wp-content/uploads/2016/11/TRIAL-International_compensation-publication_EN_web.pdf)

<sup>72</sup> See *Krsto Dostic*, Court of BiH, First Instance Verdict, 6 October 2016; *Adil Vojic and Bekir Mesic*, Court of BiH, First Instance Verdict, 16 March 2016; *Nenad Vasic*, Doboj District Court, First Instance Verdict, January 2017.

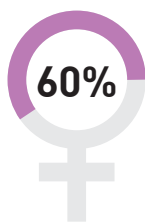
<sup>73</sup> *Rape Myths*, pg. 62; *Towards Justice*, pgs. 86-87; Interview with Adrijana Hanusic Becirovic, TRIAL International, 27 June 2018.

Meanwhile, criminal courts generally direct CRSV survivors to civil proceedings, where they are forced to incur additional costs, testify once more, and relinquish the guarantee of identity protection.<sup>74</sup> Nonetheless, most women do not even make it to this stage, as civil courts are unjustifiably applying statutes of limitations to dismiss all wartime claims.<sup>75</sup> In certain cases, courts have even ordered women to pay fees and have seized their assets, evoking wartime trauma.

Outside of the courtroom, the social pension scheme is not harmonized. In FBiH, survivors of CRSV are able to obtain social benefits. In RS, however, only survivors who suffered at least 60 percent bodily damage qualify for such benefits, meaning that the vast majority of women are excluded from social protection.<sup>76</sup> Furthermore, the pensions themselves are small; below those allocated to war veterans and insufficient to cover housing, medical bills, and other regular expenses.<sup>77</sup> Encouragingly, RS is in the process of passing a law on wartime torture victims that would qualify all CRSV victims for social services.

Furthermore, the pensions themselves are small; below those allocated to war veterans and insufficient to cover housing, medical bills, and other regular expenses.

Apart from the challenges enumerated above, CRSV victims are often marginalized and stigmatized by society and professionals alike.<sup>78</sup> The government has yet to systematically address such attitudes, which hinder victims from seeking help and redress. Initiatives such as the Women's Court - a public forum set up by regional women's CSOs in which CRSV survivors testified about their experiences - have contributed to raising awareness and changing societal perceptions.<sup>79</sup> As noted by women's CSOs, until stigmatization is reduced, the IC's goals with respect to all forms of VAWG, including CRSV, will "remain unattainable in BiH".<sup>80</sup>



In RS, only survivors who suffered at least 60 percent bodily damage qualify for such benefits, meaning that the vast majority of women are excluded from social protection.

<sup>74</sup> *Towards Justice*, pg. 85; TRIAL International, *Compensating Survivors*, pg. 7; Interview with Adrijana Hanusic Becirovic.

<sup>75</sup> *Compensating Survivors*, pgs. 39-40; Interview with Adrijana Hanusic Becirovic.

<sup>76</sup> Amnesty International, *Last Chance for Justice for Bosnia's Wartime Rape Survivors*, pgs. 37-38.

<sup>77</sup> Amnesty International, *Last Chance for Justice for Bosnia's Wartime Rape Survivors*, [September 2017], pgs. 37-38; Human Rights Committee, *Concluding Observations on the third periodic report of Bosnia and Herzegovina*, para. 17.

<sup>78</sup> Interview with Adrijana Hanusic Becirovic; Rape Myths.

<sup>79</sup> European Women's Lobby, *Disrupting the Continuum of Violence against Women and Girls*, 2017, pg. 11. Available at [https://www.womenlobby.org/IMG/pdf/factsheet\\_violence\\_against\\_women\\_and\\_girls\\_in\\_europe\\_2017\\_website.pdf](https://www.womenlobby.org/IMG/pdf/factsheet_violence_against_women_and_girls_in_europe_2017_website.pdf)

<sup>80</sup> Interview with United Women Banja Luka representative; interview with Adrijana Hanusic Becirovic.



## VIOLENCE AGAINST REFUGEE AND MIGRANT WOMEN



Of late, for the first time in recent history, there has been an influx of refugees into BiH.<sup>81</sup> Due to the newness of this phenomenon, there is little information on the prevalence and nature of violence against refugee women. While more data is thereby required, the basic legislative framework is set forth below.

BiH's Law on Asylum recognizes VAWG—including sexual violence and acts “specifically related to gender”—as a form of persecution in determining refugee status.<sup>82</sup> Additionally, the law identifies, *inter alia*, victims of rape and genital mutilation as “vulnerable groups” for the purposes of the asylum process. The law's provision on non-refoulement, however, does not expressly cite VAWG as a justification against removal or return, and is therefore not in line with Article 61.2 of the IC.

As mentioned above, there is a lack of information on how the government is treating refugee women—or managing the increase in the number of refugees as a whole.<sup>83</sup> The majority of refugees are currently in Bihac, where Aida Behrem – director of local women's CSO Zene sa Une - reports that the safe house is so overwhelmed with providing basic services to refugee women and their families that it has not been able to address VAWG. Correspondingly, a story recounted by Medica Zenica director Sabiha Husic

As mentioned above, there is a lack of information on how the government is treating refugee women—or managing the increase in the number of refugees as a whole.

<sup>81</sup> See Council of Europe, *Letter to the authorities regarding the migration situation in Bosnia and Herzegovina*, 9 May 2018. Available at <https://rm.coe.int/commdh-2018-12-letter-to-the-authorities-regarding-the-migration-situa/1680870e4d>

<sup>82</sup> Law on Asylum [Official Gazette of BiH Vol. 11/16], Article 20. See also Article 29(3).

<sup>83</sup> See *Letter to the authorities regarding the migration situation in Bosnia and Herzegovina*.

Given uncertainty about the allocation of financial responsibility, the paucity of information on the ground, and the likelihood that the number of refugees will increase in the coming years, further research on violence against refugee women is vital.

is likely indicative of BiH's under-preparation regarding the unique issues facing refugee women.

As detailed by Ms. Husic, the woman in question had been raped and abused by several men at a refugee camp in Sarajevo. However, several safe houses denied her entry due to apprehension that the government would not provide funding for a refugee's stay. Medica Zenica ultimately accepted the woman into its safe house, concluding that its "mission to support women and children" superseded ambiguities with respect to the woman's legal status. A representative of FLD noted that the Sarajevo Canton Ministry for Social Welfare informed her that the Ministry would not subsidize refugees' housing in shelters and that funding should come from either FBiH or the state - which have not shown any willingness to pay. Given uncertainty about the allocation of financial responsibility, the paucity of information on the ground, and the likelihood that the number of refugees will increase in the coming years, further research on violence against refugee women is vital.

At odds with Article 59 of the IC, BiH legislation fails to adequately protect migrant women subjected to domestic violence.<sup>84</sup> The Law on the Movement and Stay of Aliens and Asylum enumerates several ways that women whose residence depends on marital status can remain in BiH even upon the cessation of marriage; if the woman holds custody over a minor child with BiH citizenship; if the woman's husband dies; if the woman has lived in BiH continuously for 3 years on the basis of her marital status and submits an independent residence request; and if "humanitarian grounds" exist.<sup>85</sup> While the law identifies several specific "humanitarian grounds", the perpetration of VAWG is not cited. Correspondingly, migrant women in BiH who have been subjected to violence by their partners may feel that they have no choice but to remain in violent marriages.<sup>86</sup>



<sup>84</sup> See *Framework Strategy*, pg. 21

<sup>85</sup> Law on Movement and Stay of Aliens and Asylum in BiH [Official Gazette of BiH Vol. 36/08 and 87/12], Articles 54, 58.

<sup>86</sup> See *Framework Strategy*, pg. 21.

## WOMEN'S CSOS

Women's CSOs lead the monitoring and implementation of the IC, with their government partners receding into the background. At variance with Articles 8 and 9 of the IC, CSOs have assumed the financial burden of responsibilities specifically allocated to government institutions, such as the funding of safe houses, SOS lines, and legal assistance. As observed by Mima Dahic of Viva Zene, "in some cases cooperation between institutions is weak or non-existent, the protocols are not implemented." This situation has resulted in a struggle for funding and reliance on international donors. With government resources limited, competition among women CSOs has heightened and those organizations less familiar with various international application procedures are "fighting to survive".<sup>87</sup>

Some interviewees noted that the government only periodically consults CSOs on the development of VAWG legislation and policies, despite their long-standing experience in the field. Medica Zenica, for example, is almost never asked to comment on the drafting of different strategies and laws, to the point that the organization sometimes "doesn't even know who is in the working group or how to give our contribution." According to the Center for Women's Rights in Zenica, "women's NGOs are insufficiently represented in the key processes of elaboration and discussion on the future of BiH, including reforms, which has led and leads to a series of gender-blind policies and practices". Tellingly, the entity and state level governments have not consulted women's CSOs for the upcoming GREVIO report. Instead, women's CSOs are preparing an alternative shadow report.

Viva Zene, UWBL, and the FLD have had more positive experiences with respect to consultations. Viva Zene participated in both the development of the FBiH Strategy on Preventing Domestic Violence and the drafting of gender-sensitive amendments to the FBiH CC. The FLD is part of the working group for the new FBiH Strategy on Preventing Domestic Violence, while UWBL gave feedback on the RS Strategy on Preventing Domestic Violence as well as on the Framework Strategy for Implementation of the IC. Promisingly, the CSOs referenced in the report are all part of the "Safe Network", a collaborative initiative focused on eliminating VAWG. The Safe Network's representative – at present Viva Zene – is helping to draft the new Framework Strategy.



87 Interview with Sabiha Husic.

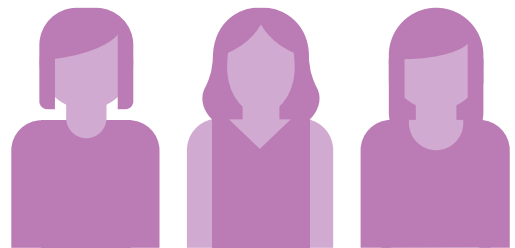
**“it is problematic that just our organization is represented within the RS Council and that there is no constant body to facilitate dialogue with the government-it is all ad hoc.**

Despite such progress, interviewees emphasized that the government tends to view women’s CSOs as sources of information and providers of services rather than as strategic partners. Medica Zenica director Sabiha Husic, for example, remarked that she hears from the government “when they need data and for us to fill out a questionnaire about what’s actually happening on the ground.” The Center for Women’s Rights recounted similar interactions: *“women’s CSOs are contacted irregularly, they are not consulted in decision-making, report preparation and submission, or involved in consultation processes in prioritizing and drafting legislation.”* United Women Banja Luka has likewise found that women’s CSOs are “primarily recognized as service providers, not as policy implementers.”

There is no regular channel of communication between women’s CSOs and government institutions, detracting from the implementation and monitoring of the IC. The collaborative mechanisms in existence, though few and far between, have proved successful. Medica Zenica is a member of a Zenica canton working group on VAWG, which comprises two NGO representatives and four institutional representatives. While the group meets infrequently - when one of the NGOs has produced a report - Husic has found these sessions to be very productive. Without them, women’s CSOs in FBiH are shut out of policy-making. Similarly, UWBL is part of the Council for Combating Domestic Violence; the intergovernmental body in RS that supervises policies and legislation

on IPV. UWBL is the sole NGO member of the Council and has established a practice of consulting with smaller NGOs to ensure that their views are also represented. Although UWBL is able to influence policy measures through participation in the Council, the Council is the only mechanism of its kind in RS. As noted by a representative from United Women Banja Luka, “it is problematic that just our organization is represented within the RS Council and that there is no constant body to facilitate dialogue with the government-it is all ad hoc.”

While women’s CSOs are often sidelined from policymaking processes, they generally have the freedom to speak without serious physical or verbal retaliation. As Sabiha Husic stated, “from time to time there are threats, but overall we are an independent women’s organization and we operate freely.” Instead, the primary obstacle to open dialogue with and criticism of the government is the prospect that the government will cut funds for essential services if it disagrees with women’s CSOs’ public advocacy.



## RECOMMENDATIONS



- Provide funding for safe houses, legal assistance, and SOS lines, in line with the LPDVs.
- Prioritize the safety of IPV survivors undergoing divorce proceedings over family unification.
- Establish rape crisis centers, addressing the absence of targeted services for sexual violence survivors.
- Establish a reparations scheme for CRSV survivors.
- Ensure that refugee women have access to the same services provided to other survivors of VAWG, particularly with respect to refugee women's shelter in safe houses.
- Establish education programs that - starting in primary school - emphasize gender equality, the destruction wrought by patriarchal attitudes, and the criminality of VAWG.
- Undertake awareness raising campaigns regarding VAWG.
- Organize comprehensive, continuous training for professionals working with VAWG survivors, with the goal of increasing sensitivity to survivors' needs.
- Conduct further research on the nature and prevalence of different forms of VAWG.

### STATE AND ENTITY LEVEL INSTITUTIONS

- Include women's CSOs as partners in policy making on VAWG, whether it comes to the the development of strategic plans, the amendment of laws, or the GREVIO process.
- Set up formal channels of communication through which women's CSOs and relevant institutions can regularly consult on issues pertaining to VAWG; working groups, councils, conferences, and so on.

## COURTS

- Correctly characterize IPV crimes—i.e., when applicable, as criminal offences and in their appropriate aggravated form.
- Qualify VAWG survivors participating in criminal proceedings as vulnerable witnesses when necessary.
- Issue protective measures in criminal proceedings when necessary.
- Take steps to ensure that survivors' compensation claims are resolved in criminal trials and that they are not directed to civil proceedings.
- Stop imposing statutes of limitations and court fees on CRSV survivors who lose wartime claims.
- Impose sanctions that are commensurate with the severity of VAWG offences.
- Process urgent protective measures within the stipulated time period.
- Ensure that all perpetrators who violate protective measures are sanctioned accordingly.
- Take steps to ensure that survivors' compensation claims are resolved in criminal trials and that victims are not directed to civil proceedings.
- Ensure that urgent protective measures are processed within the stipulated time period.
- When survivors apply for protective measures before misdemeanor courts, take steps to facilitate criminal prosecutions.
- Take steps to ensure that all perpetrators who violate protective measures are sanctioned accordingly.

## PROSECUTORS

- Correctly charge IPV crimes—i.e., when applicable, as criminal offences and in their appropriate aggravated form.
- When necessary, request that VAWG survivors participating in criminal proceedings be qualified as vulnerable witnesses and that protective measures be imposed.

## STATE AND ENTITY LEGISLATURES

- (Entity) Amend the definition of sexual violence in the CCs to eliminate the requirement of force/threat of force and provide for other non-consensual acts.
- (Entity) Amend the Family Laws to eliminate the requirement that spouses with children undergo mediation.
- (Entity) Amend the LPDVs so that survivors can access safe houses without approval from CSWs.
- (FBiH and Brčko) Amend the CCs to include sexual violence offences such as genital mutilation, forced sterilization, and forced marriage.
- (RS) Pass the Law on Victims of Torture, ensuring that CRSV survivors can access social benefits.
- (BiH) Amend the Law on the Movement and Stay of Aliens and Asylum so that VAWG survivors are able to obtain residence in BiH independent of marital status.
- (BiH) Amend the Law on Asylum so that the provision on non-refoulement identifies VAWG as a justification against removal or return.



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