

Valentin Inzko
High Representative
The Office of the High Representative
Emerika Bluma 1
71000 Sarajevo
Bosnia and Herzegovina

Your Excellency,

We, the undersigned, call upon the Office of the High Representative to advocate and work with the relevant authorities of Bosnia and Herzegovina to realize the right to reparation for survivors of conflict-related sexual violence. Reparations can take various forms, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition,¹ and should aim to empower and transform the lives of women and men who have suffered from a multiplicity of forms of sexual violence.

The State of Bosnia and Herzegovina is obligated under international and domestic law to ensure survivors' right to remedy and reparations², however this right remains unrealized, as survivors suffer from physical and psychological health problems, poverty, neglect, stigmatization, and violence directly linked to their identity and position as survivors of sexual violence.

UN treaty bodies, including the Committee on the Elimination of Discrimination against Women (CEDAW), the Committee against Torture (CAT), the Human Rights Committee (CCPR), and the Committee on Economic, Social and Cultural Rights (CESCR), have repeatedly called upon the State to provide comprehensive reparations, highlighting the inadequate and unequal access survivors have to compensation, support and rehabilitation measures, including health services, psychological care, legal aid, witness protection, and economic empowerment measures.

The Office of the High Representative (OHR) can serve as a strategic advocate for comprehensive, gender-sensitive reparations for survivors of sexual violence. We believe the OHR has the responsibility and authority to facilitate collaboration amongst Bosnian authorities, and in conjunction with local organizations and international agencies, the OHR can provide guidance to Bosnian authorities on policy development for survivors of sexual violence.

¹ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. General Assembly Resolution 60/147, 16 December 2005.

² Article 8 of the Universal Declaration of Human Rights, article 2 of the International Covenant on Civil and Political Rights, article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and article 39 of the Convention on the Rights of the Child, and of international humanitarian law as found in article 3 of the Hague Convention respecting the Laws and Customs of War on Land of 18 October 1907 (Convention IV), article 91 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977, and articles 68 and 75 of the Rome Statute of the International Criminal Court, Annex 6, article 1 and the Appendix on Human Rights of the Dayton Peace Agreement.

We call upon the Office of the High Representative to engage Bosnian authorities in the following ways:

1. Urge the Council of Ministers to reintroduce the draft Programme for Victims of Wartime Rape, Sexual Abuse and Torture, and their Families, and draft Strategy for Transitional Justice. The draft Programme for Victims of Wartime Rape, Sexual Abuse and Torture, and their Families was finalized by the Ministry of Human Rights and Refugees in 2012, and the draft Strategy for Transitional Justice was finalized in 2012 by the Ministry of Human Rights and Refugees and the Ministry of Justice, however neither draft has been adopted.³
2. Urge Republika Srpska to participate in the inter-ministerial working group for the development of a draft Law on the Rights of Victims of Torture. The Federation of Bosnia and Herzegovina (FBiH) and Brčko District are participating in this working group, however without the participation of Republika Srpska we fear the draft will not be considered and approved.⁴
3. Urge cantonal governments in FBiH to allocate financial and human resources to ensure survivors have the right to preferential access to public institutions, including health clinics, pursuant to the FBiH *Law on the Basis of the Social Protection, Protection of Civilian Victims of War and Families with Children*.⁵ This should include gender-sensitive and trauma-informed trainings for service providers, to ensure that the implementation of any service by a public institution is reflective and respectful of survivors' specific needs. Presently, preferential access is not universally implemented in all ten cantons of FBiH. Further, in cantons that have implemented this provision, some survivors have reported experiences of mistreatment and humiliation by service providers.⁶
4. Foster collaboration between FBiH and the cantonal governments to ensure monthly allowances are paid to survivors on time and in full, pursuant to the FBiH *Law on the Basis of the Social Protection, Protection of Civilian Victims of War and Families with Children*.⁷ FBiH pays 70% of the monthly allowances, and the cantons pay the remaining 30%, however some survivors have reported delays in receiving payments.⁸
5. Urge Republika Srpska to ensure the draft RS *Law on the Protection of War Torture Victims*⁹ is inclusive of and accessible to survivors of all ethnicities. The RS should remove the language in Article 5 and Article 6 that specifies a timeframe of "the last three years" for residency in the RS or Brčko District. This is problematic and discriminatory to

³ UN Committee against Torture, *Answers to the CAT's List of issues prepared by BiH institutions to the sixth periodic report of Bosnia and Herzegovina*, CAT/C/BiH/6, paras. 214-215, 222, 17 May 2016.

⁴ Amnesty International, *Bosnia and Herzegovina: Submission to the UN Committee against Torture*, 62nd Session, 6 November – 6 December 2017.

⁵ Law on the Basis of Social Protection, Protection of Civilian Victims of War and Families with Children of FBiH, *Official Gazette of FBiH* nos. 36/99, 54/04, 39/06, 10/16.

⁶ Amnesty International, *We Need Support not Pity: Last Chance for Justice for Bosnia's Wartime Rape Survivors*, 2017.

⁷ Law on the Basis of Social Protection, Protection of Civilian Victims of War and Families with Children of FBiH, *Official Gazette of FBiH* nos. 36/99, 54/04, 39/06, 10/16.

⁸ Amnesty International, *We Need Support Not Pity: Last Chance for Justice for Bosnia's Wartime Rape Survivors*, 2017.

⁹ The RS draft law on the Protection of War Torture Victims of Republika Srpska: <http://www.narodnaskupstinars.net/?q=la/akti/zakoni-u-proceduri/nacrt-zakona-o-za-titi-rtava-ratne-torture>.

survivors who have taken up residency in FBiH or elsewhere in order to secure social assistance, especially for Bosniak returnees who are already discouraged due to genocide denial and the glorification of war crimes.

6. Urge Republika Srpska to establish an independent, multi-ethnic, gender-balanced commission to issue certificates recognizing the status and rights of victims of war torture, and remove the Republic Center for War Research and War Crimes from this responsibility, amending Articles 16(1) and 16(2) of the draft RS *Law on the Protection of War Torture Victims*¹⁰
7. Urge Republika Srpska to further amend Article 16 of the draft RS *Law on the Protection of War Torture Victims*¹¹ to insert clear and nondiscriminatory language to ensure diverse forms of documentation are accepted as evidence to prove the status of the applicant as a victim of war torture. Such documentation should not be required to originate from the Republic Center for War Research and War Crimes or RS authorities.
8. Urge Republika Srpska to remove the provision in the draft RS *Law on the Protection of War Torture Victims*¹² that categorizes survivors of torture into separate groups entitled to different amounts of monthly civilian disability allowance. All survivors of torture should have access to the highest amount available to civilian victims of war, which is defined as the “first group” pursuant to the RS *Law on the Protection of the Civilian Victims of War*¹³.
9. Urge Republika Srpska, upon passage of the draft RS *Law on the Protection of War Torture Victims*¹⁴, to ensure a humane atmosphere during the application process, so to avoid re-traumatization of survivors and to ensure that survivors are treated with the utmost dignity and respect.
10. Urge Republika Srpska, upon passage of the draft RS *Law on the Protection of War Torture Victims*, to allocate financial and human resources to enable the full implementation of the draft RS *Law on the Protection of War Torture Victims*,¹⁵ which should ensure survivors’ access to quality, gender-sensitive, trauma-informed services, including health services, psychological care, legal aid, witness protection, economic empowerment measures, and should ensure timely and consistent access to compensation for harms suffered.

¹⁰ The RS draft Law on the Protection of War Torture Victims: <http://www.narodnaskupstinars.net/?q=la/akti/zakoni-u-proceduri/nacrt-zakona-o-za-titi-rtava-ratne-torture>.

¹¹ The RS draft Law on the Protection of War Torture Victims: <http://www.narodnaskupstinars.net/?q=la/akti/zakoni-u-proceduri/nacrt-zakona-o-za-titi-rtava-ratne-torture>.

¹² The RS draft Law on the Protection of War Torture Victims: <http://www.narodnaskupstinars.net/?q=la/akti/zakoni-u-proceduri/nacrt-zakona-o-za-titi-rtava-ratne-torture>.

¹³ The Law on Protection of the Civilian Victims of War. Official Gazette of the RS, 25/93, 1/94, 32/94, 37/07 and 60/07.

¹⁴ The RS draft Law on the Protection of War Torture Victims: <http://www.narodnaskupstinars.net/?q=la/akti/zakoni-u-proceduri/nacrt-zakona-o-za-titi-rtava-ratne-torture>.

¹⁵ The RS draft Law on the Protection of War Torture Victims: <http://www.narodnaskupstinars.net/?q=la/akti/zakoni-u-proceduri/nacrt-zakona-o-za-titi-rtava-ratne-torture>.

11. Urge Brčko District to make appointments to the Expert Commission¹⁶ responsible for issuing certificates to survivors, ensure the Commission is fully staffed and prepared to meet the demands of the backlog of applications. Appointments to the Expert Commission should be made in consultation with the survivors' associations and other local organizations.
12. Urge Brčko District to allocate financial and human resources to enable the full implementation, which should ensure survivors' access to quality, gender-sensitive, trauma-informed services, including health services, psychological care, legal aid, witness protection, economic empowerment measures, and should ensure timely and consistent access to compensation for harms suffered.

We are convinced that the adoption and full implementation of national legislation, including the draft Programme for Victims of Wartime Rape, Sexual Abuse and Torture and their Families, the draft Strategy for Transitional Justice, and the draft Law on the Rights of Victims of Torture, would provide forms of reparation and serve as a comprehensive platform to address the rights of survivors of sexual violence.

We echo the calls made by the UN Committee on Torture for the establishment of “an effective reparation scheme at the national level to provide all forms of redress to victims of war crimes, including sexual violence”, in particular for expediting the adoption of the aforementioned draft laws.¹⁷ These three laws would not infringe upon the constitutional powers of the entities. Instead, such laws would provide overarching principles, proscribe specific rights and ensure access to health, psychological, economic, and legal services for survivors regardless of ethnicity or place of residence.¹⁸

We acknowledge that the passage and implementation of national reparations legislation requires time and cooperation amongst authorities across Bosnia's complex governing structure. In the interim, the improvement and full implementation of entity and Brčko District laws is of the utmost importance. Bosnian authorities must ensure restrictive and discriminatory provisions are removed from legislation relating to redress for survivors of sexual violence.¹⁹ To this end, we urge the OHR to consider establishing an independent commission to provide oversight and accountability for the various laws related to rights of survivors of sexual violence.

We believe that the Office of the High Representative can be an advocate for survivors' right to reparation pursuant its mandate as the monitor of civilian aspects of the peace agreement. The OHR can bring conflict-related sexual violence onto the agendas of Bosnian authorities, urge action, and foster collaboration to mobilize support between local organizations, international agencies, and authorities on this urgent issue. Gender-sensitive reparations have the potential to transform the lives of individual survivors, families, and communities, and can contribute to the

¹⁶ The Expert Commission is pursuant to the Decision on the Protection of Civilian Victims of War of Brčko District, *Official Gazette of Brčko District*, 33/2012 and 15/2015.

¹⁷ UN Committee against Torture, *Concluding observations on the sixth periodic report of Bosnia and Herzegovina*, CAT/C/BiH/CO/6, Para. 19(a), 22 December 2017.

¹⁸ Amnesty International, *We Need Support Not Pity: Last Chance for Justice for Bosnia's Wartime Rape Survivors*, 2017.

¹⁹ UN Committee against Torture, *Concluding observations on the sixth periodic report of Bosnia and Herzegovina*, CAT/C/BiH/CO/6, Para. 19(c), 22 December 2017.

creation of an inclusive and sustainable peace in Bosnia and Herzegovina. The time for action is now.

We extend our sincere appreciation to the Office of the High Representative for hearing our concerns. We look forward to the opportunity to meet with you and discuss this at your convenience. We will be in touch when our representative is in Sarajevo.

Undersigned:

Katarina Lucas, M.A., Independent Researcher

Prof. Dr. David Pettigrew, Professor of Philosophy and Holocaust and Genocide Studies Southern Connecticut State University; Member, Steering Committee, Yale University Genocide Studies Program; Board Member, Bosnian-American Genocide Institute and Education Center; Member, International Team of Experts, Institute for Research of Genocide, Canada; Board Member, Post-Conflict Research Center, Sarajevo

Sanja Seferovic Drnovsek, J.D., M.Ed.; Member, International Team of Experts Institute for Research of Genocide Canada; Board Member, Bosnian North American Women's Association; Commissioner, Illinois Holocaust and Genocide

Ida Sefer, M.S.W., M.A.,
President of the Board of Directors,
Bosnian-American Genocide Institute and Education Center

Bakira Hasecic, President,
Association of Women Victims of War

Siba Kikanovic, President,
Bosnian North American Women's Association

Dzafer Kulenovic, President,
Bosnian American Cultural Association

Munira Subasic, President,
Association "Movement of Mothers of Srebrenica and Zepa Enclaves"

Rasim Muratovic, Ph.D., Director,
Institute for Research of Crimes against Humanity and International Law

Dr. Emir Ramic, Chairman,
Institute for Research of Genocide Canada

Adil Kulenovic, President
Association of Independent Intellectuals, KRUG 99, Sarajevo

Prof. Dr. Senadin Lavic, President,
Cultural Community of Bosniak "Preporod"

David Simon, Ph.D.,
Director, Genocide Studies Program, Yale University, USA

Aida Sarkinovic, President,
Bosniak-American National Association

Zahida Bajric, President,
Bosnian American Association of Women Behar-Grand Rapids, Michigan

Selena Seferovic M.A., Slavic Studies, Director,
Bosnian Library, Chicago

Mirsad Causevic, President,
Friends of Prijedor

Mujko Erovic, M.L.S., Owner and Editor,
Bosnia United, Inc.

Seida Karabasic. President,
Association of Women of Prijedor "Izvor"

Hariz Halilovich, Ph.D.,
Associate Professor
Vice-Chancellor's Senior Research Fellow
Social and Global Studies Research Centre
RMIT University, Melbourne
Australia

Patrick McCarthy, M.S., M.A.,
Associate Dean and Professor, Saint Louis University,
Senior Advisor, Bosnia Memory Project, Fontbonne University

Smajlje Srdanovic, President
Islamic Cultural Center of New York