

# **THE STRUGGLE VICTIMS OF DOMESTIC VIOLENCE ENDURE TO REACH JUSTICE — A CASE STUDY ON DOMESTIC VIOLENCE IN BOSNIA AND HERZEGOVINA**

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In partial fulfilment of the requirements for the degree of Master of Arts

MA Final Thesis  
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## Abstract

The methodology used in this research is Violence against women constitutes any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women. This study sought to evaluate and examine the problem of what obstacles and struggles are in the way of survivors of domestic violence when trying to achieve justice in Bosnia and Herzegovina. Methodology used in this paper stems from both qualitative analysis and field research on the subject of domestic violence and access to justice in Bosnia and Herzegovina. The major findings in this thesis highlight Bosnia's lack of fulfilling their state obligations. Additionally, this thesis highlights the barriers women who have experienced domestic violence face in Bosnia and Herzegovina. While the system in Bosnia is incredibly complex, there needs to be more light shed on this topic, moreover this thesis writes about women's rights as human rights.

## Acknowledgements

Words cannot express my gratitude to my professor and head of my department, Mathias Möschel, for his invaluable patience, encouragement, and feedback. I would also like to express my deepest appreciation to the CEU Alumni who are working in Bosnia. My field research — plus my overall understanding of Bosnia — would not be what it is today without your help and constant efforts of helping me get connected to the right people.

This journey would not have been possible without my special Legal Studies Cohort, especially my colleagues Ani, Dennitsa, Georgia, and Montse, I am forever grateful for the deep bonds that we created this year and for always being right by my side through every step of this journey.

I would be remiss if not to mention my family, especially my Mom, my Dad, and my pup Tobey. My family's belief in me has kept my spirits and motivation high during this process. I am grateful to have been influenced by my father's Lebanese background, for if it were not for him, I would not feel so deeply connected to Bosnia, and this thesis might have never come to fruition. I hope you are proudly watching over me from heaven Habibi!

Lastly, I would like to express my deepest gratitude to the family I have made here at CEU. I had always hoped to meet so many bright, intelligent, driven, and caring individuals. I can say with a heavy heart that everyone I have met this year has truly changed my life for the better and has educated, encouraged, and challenged me in ways I had only dreamed of. So, for this I am forever grateful to all of you!

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## Introduction

Setting the scene of how Bosnia and Herzegovina (hereafter Bosnia) fails to support victims and survivors of domestic violence (hereafter DV) would be best executed by starting with a real-life case from the Republica Srpska entity of Bosnia, this case covers violence – an attempted murder – against a former partner and follows her through her struggle of trying to achieve justice in the unbelievably complex system that Bosnia operates in.<sup>1</sup> To begin, the applicant in this case will be addressed as *Suzana*, one day Suzana received a message and firewood from her former partner and although Suzana was no longer with her partner, she took the wood into her apartment, due to the cold weather at the time she instantly set the bundle of firewood into her fireplace and lit a match assuming she would be simply heating her apartment.<sup>2</sup> To her surprise, the fire exploded immediately causing Suzana to lose all her teeth, as well as enduring many other serious physical injuries which meant she required immediate medical help.<sup>3</sup> What Suzana did *not* know and to her shock was that her former partner had placed an M-52 grenade in the bundle of wood knowing she would one day light this bundle on fire.<sup>4</sup> Suzana required surgery but the costs were incredibly high and her insurance from working at a supermarket barely covered any of the expenses, unfortunately, the rest of that medical bill was left for her to pay.<sup>5</sup> Seeking support, she went to the *Free Legal Aid Center* that the government provides but Suzana was denied support as this type of aid is only available to people who meet

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<sup>1</sup> Radončić, Dženana, Hodžić, Edin, & Sendić, Meliha. (2019). *Integral Regional Study. Is justice failing women survivors of violence? Action-oriented recommendations for effective prevention, protection and prosecution in the Western Balkans and Turkey*. The Center of Women's Rights (Bosnia and Herzegovina), United Nations Women regional programme on ending violence against women in the Western Balkans and Turkey. Pages 56-58.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

certain criteria.<sup>6</sup> Even though Suzana works at a low paying job and is simultaneously raising her 14-year-old daughter by herself, she was forced to foot the bill.<sup>7</sup> Moving ahead, Suzana knew she wanted justice and sought out her first lawyer, but she was advised by this lawyer not to go to trial and instead make a settlement claim with her perpetrator.<sup>8</sup> Settling out of court is typical in Bosnia for most cases that deal with DV, the cases either settle or end in a plea bargain. Suzana refused this first option and instead hired a new lawyer, who helped her present all the necessary documents to the court.<sup>9</sup> The process of going to court is where many victims and survivors of DV find justice, but the verdict that was delivered to Suzana's perpetrator was merely a reduced sentence of only eight years which he never served and instead was put on house arrest after only six months.<sup>10</sup> As of right now, this assailant is wandering about freely, continuing to wreak havoc on Suzana by stalking her from his car as she waits for the bus to go to work every day the lack of safety measures in Bosnia has made life feel insanely unsafe for Suzana. In these conditions it is as clear to see that survivors do not feel protected, nor do they feel entitled to receive proper compensation for what they have been through.<sup>11</sup> If attempted murderers are still roaming about the streets, it raises the question who will be held responsible if this man tries to kill his victim again?<sup>12</sup>

This brings into focus the main research question of this thesis, why is it so hard for victims of DV to achieve justice in Bosnia? The case above highlights many consequential problems with the systems of protection that are put in place in Bosnia. "The women's situation

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<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

on combating domestic violence is facing particular issues in Bosnia that go far beyond the typical ones that highlight misogyny, gender stereotypes, and power. This comes from the creation of a new, multiethnic state where women's issues were not addressed accordingly nor seen as politically relevant in a transitional context".<sup>13</sup> The most recent GREVIO report highlights these struggles. The topic of DV in Bosnia is not overtly researched due to how complex the Bosnian system is, and the lack of international attention that is given to the state. Therefore, I have chosen to further explore what are the obstacles that victims and survivors of DV in BiH (Bosnia and Herzegovina) face. The scope of my research covers barriers in the institutional set ups in Bosnia against victims of DV, as well as their ties to socio-cultural aspects. Additionally, my research covers some international instruments that Bosnia has signed onto and ratified that are meant to help protect victims and survivors of DV. From this research I conclude with recommendations for the state that I have gathered through both my qualitative and field research.

The purpose of this thesis is to expand on what has already been written about DV in Bosnia but explain it through a human rights advocacy approach that is simple and easy to digest for readers who do not know much about the country, nor the situation victims face when trying to achieve justice in this system. It cannot be stressed enough that much of this paper will stem from international groups such as the United Nations, the Council of Europe, and other prevalent Bosnian specific NGOs due to my personal limitations of language barriers and the limited scholarly articles that cover the niche topic of DV in Bosnia in English, on top of this, due to the

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<sup>13</sup> Council of Europe. Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO). (2020). *Report submitted by Bosnia and Herzegovina pursuant to Article 68, paragraph 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report)*. (6<sup>th</sup> February, 2020). Pages 1-207. <https://rm.coe.int/greviointf-2020-12/pdfa/16809eed4a>



lack of funding in Bosnia correlated to reporting and monitoring there is an overall lack of data which will be further explained later in this thesis. Due to these limitations, my qualitative research was more selective, and I was pushed to find answers for myself by conducting my own field research through hosting a multitude of interviews in Bosnia. While my limitations were complex, I was able to draw conclusions that were supported in the most recent unofficial 2021 GREVIO report on Bosnia that I was able to acquire during my research period.

This thesis sets out to cover and educate audiences on understanding the Bosnian legal, political and governmental makeup and how the Bosnian system correlates to the barriers that are in place that victims and survivors of DV must overcome to try to achieve justice, as well as touch on the cultural and constitutional context of Bosnia. These examples will expose the multitude of barriers that women who have faced violence against them, more specifically DV, must go through to achieve justice and lastly this thesis will touch on where Bosnia is specifically failing in their legal protections in conjunction to international laws that have been ratified. Lastly this thesis will conclude with recommendations for the state on how to best move forward with protecting victims and survivors of DV who are trying to achieve justice.

## Chapter I The Bosnian Legal Situation – Mapping Inconsistencies of Law?

### 1.1 Understanding the political makeup of Bosnia

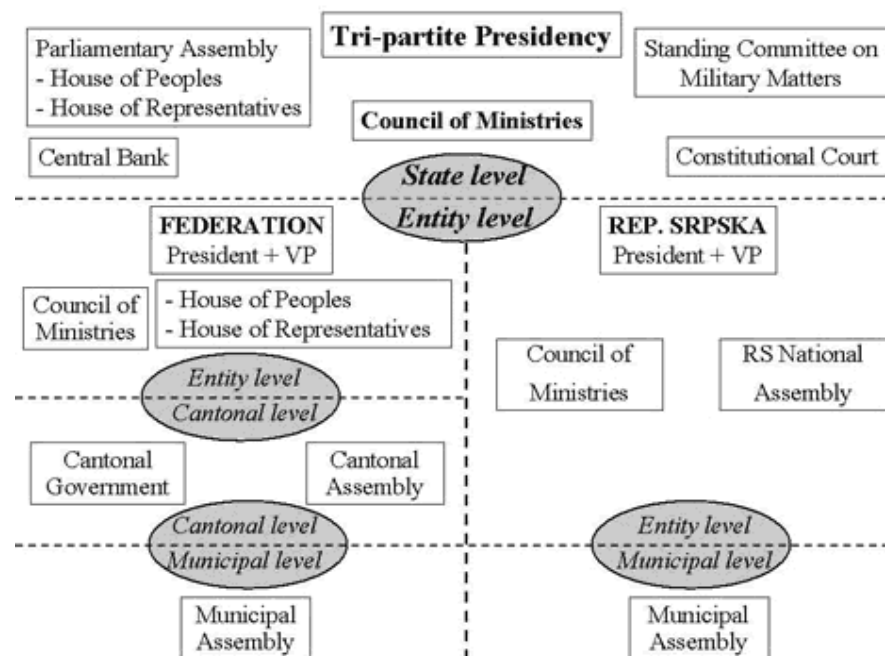
After the Balkan wars Bosnia signed on to a peace agreement called the Dayton Peace Accords which divided the country along ethnic lines which thus created two entities: The Federation of Bosnia and Herzegovina and the Republika Srpska.<sup>14</sup> While this agreement was never meant to be a permanent solution, it is still being used today. Dayton unintentionally cemented the division of the country and as a result of this women in Bosnia became a target group exposed to many vulnerabilities. To this day women continue to be excluded from major political processes and are not invited to help make crucial decisions in their society. Representation for marginalized women continues to be a challenge since they are exposed to double discrimination in both public and private spheres.<sup>15</sup>

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<sup>14</sup> David Chandler, David. (2000). *Bosnia: Faking Democracy after Dayton*. Pluto Press. Second Edition. Pg. 199

<sup>15</sup> UN Women. (2021). *Country Gender Equality Profile of Bosnia and Herzegovina 2021*. Report.

### 1.1.2 Government Structure



*Figure 1.1 Government Map of Bosnia and Herzegovina*

First, starting with the state level which begins with the Presidency in BiH. In Bosnia they elect three presidents, each one of them represents one of the three constituent people: Bosniaks (Muslims), Croats (Catholics), and Serbs (Orthodox). Still on the state level there is the Parliamentary Assembly which consists of the House of Peoples, and the House of Representatives. Alongside those bodies are also the Council of Ministers, and the Constitutional Court. The Bosnian system then breaks down into the Entity level which consists of two entities, the Federation of Bosnia and Herzegovina – which is mainly made up of Bosniaks and Croats – and the other entity is called the Republika Srpska – which is made up of mainly Serbs. Each entity has their own President, Vice-President, Council of Ministers, and Parliaments. Moreover, on the Federation side their government breaks down even further to their Cantonal level, which are known as “cantons”. These cantons are administrative units which consist of the Cantonal Government and the Cantonal Assembly. Lastly both entities have at their Municipal level of

government which consists of their own Municipal Assembly. All of this was created from the Dayton Accords that ended the 1992-1995 war, from this document they wrote a constitution trying to satisfy the three sides that were involved in the conflict.<sup>16</sup> The war did end, but the country continues to suffer from poverty, corruption, and major violations.<sup>17</sup> Bosnians also suffers from having one of the most complicated systems of government in Europe. Due to this intense and extremely fragmented government system it is incredibly hard to get access to justice in a timely manner, and as a legal maxim goes, ‘justice delayed, is justice denied’ which is inherently true in the context of BiH. Beyond time, the fragmentation of laws and implementation of legislation divides the country further, especially for survivors of DV.

For the sake of this research, it is important to note that from, “...Dayton, the entities received significant power in relation to the state”.<sup>18</sup> To make matters easy and clear, what this means is that the entities can essentially disagree with one another and create separate laws, what also comes out of this is a lack of unity between the entities when carrying out laws from the state level. So, while the autonomy that is allocated to the entities gives them additional strength by the fact that state institutions must proportionally represent the three main ethnic groups in Bosnia, it is distinctly a script that forces cooperation from all three sides.<sup>19</sup> While the ethnic majorities are happy in this case, the representation of women is left out of this balancing equation, almost entirely. The result of this cooperation is ultimately a deadlock when it comes to decision making between the three sides.

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<sup>16</sup> Chandler, David. (2000). *Bosnia: Faking Democracy after Dayton*. Pluto Press. Second Edition. Pg. 199-201.

<sup>17</sup> Ibid.

<sup>18</sup> Delbyck, Kyle. (2018). Executive Summary Report: *MAPPING OF POLICIES AND LEGISLATION ON VIOLENCE AGAINST WOMEN AND THE ISTANBUL CONVENTION IN BOSNIA AND HERZEGOVINA*. European Women’s Lobby.

<sup>19</sup> Ibid.

Despite the complexities of the government structure, women in Bosnia face a multitude of barriers especially when looking at the low level of participation of women in public and political life which exposes the cleavages of not having women in decision-making positions.<sup>20</sup> Not only that, but it goes to show that women are not being involved nor invited to the table. There is a clear lack of equality when it comes to how Bosnian politics regard and represent women. Moreover, women in Bosnia are subject to countless challenges when trying to achieve equality in political, public and private life.<sup>21</sup>

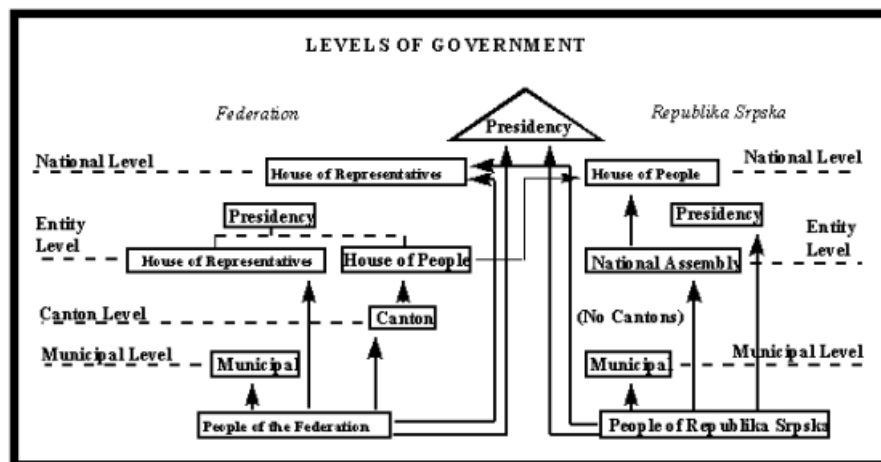


Figure 1.2 Levels of Government in Bosnia and Herzegovina.

## 1.2 Implementation of Laws

Bosnia in the past few years has really tried to make a change in adhering to new laws that would help women but, “[d]espite a carefully designed legal, strategic, and institutional mechanisms for advancing gender equality, women in Bosnia still face many challenges and

<sup>20</sup> UN Women. (2021). Country Gender Equality Profile of Bosnia and Herzegovina 2021. Report.

<sup>21</sup> Delbyck, Kyle. (2018). Executive Summary Report: *MAPPING OF POLICIES AND LEGISLATION ON VIOLENCE AGAINST WOMEN AND THE ISTANBUL CONVENTION IN BOSNIA AND HERZEGOVINA*. European Women’s Lobby.

obstacles in achieving full equality in all areas of life.”<sup>22</sup> This quote from the Gender Equality Profile highlights the disparities that women face even if on paper it would seem as though the country has its routine together.

The implementation of laws are not entirely followed through in Bosnia, from our case above there were quite a few shortcomings when looking at the execution of relevant domestic and international laws. Our applicant Suzana never received any monetary compensation for being a DV survivor, nor was she protected as a DV survivor in practice. By law Suzana was supposed to be ensured protection through proper judicial prosecution and adequate sentencing of her perpetrator for his actions against her and the attempted murder.<sup>23</sup> The reality of what is laid down in Bosnian law rarely comes to fruition when it comes to cases of DV.

Bosnia as a whole is very multifaceted, especially regarding their political and inner core administrations. Due to this vast diversity, it is incredibly hard for laws to be enforced thoroughly on both sides of the entities. Bosnia does not have the capacity to deliver proper decisions within their political and administrative systems.<sup>24</sup> The structures themselves are incredibly inefficient due to the complexity of their systems, therefore, they face a magnitude of challenges regarding consensus building and decision making.<sup>25</sup> This affects their overall capacity to, “...deliver positive development results from their recent growth”.<sup>26</sup>

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<sup>22</sup> UN Women. (2021). Country Gender Equality Profile of Bosnia and Herzegovina 2021. Report.

<sup>23</sup> Radončić, Dženana, Hodžić, Edin, & Sendić, Meliha. (2019). *Integral Regional Study. Is justice failing women survivors of violence? Action-oriented recommendations for effective prevention, protection and prosecution in the Western Balkans and Turkey*. The Center of Women's Rights (Bosnia and Herzegovina), United Nations Women regional programme on ending violence against women in the Western Balkans and Turkey.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> UN Women. (2021). *Country Gender Equality Profile of Bosnia and Herzegovina 2021*. Report.

Before diving any deeper, it is imperative to note how complex Bosnia's constitutional organization of the state really is, with this in mind it is easier to see how regulations of DV and uniform protection of all DV victims/survivors are not always reflected in real time. While the country is broken down into two entities and their Brcko District, the system of protection for DV is regulated at all levels of government.<sup>27</sup>

Because Bosnia possesses weak coordination throughout their entire state level the result of this is reflected upon their lower levels of government. With this in mind, the lower levels of government often diverge from the main objectives that are set out by their domestic and international laws that must be followed.<sup>28</sup> The problem can be found in that international state obligations are pushed to the lower levels of administration due to the federal competences of the various entities and therefore victims/survivors receive uneven or even unreadable results when accessing justice.

### 1.2.1 How Laws are Followed Through

While Bosnia is on board for wanting to achieve gender equality in all segments of their society, they have a very high rate of violence against women (hereafter VAW) and DV which challenges their way of assessing and addressing the protection of women's rights.<sup>29</sup> Due to patriarchal perceptions of women and their role in family and society, women are usually the subject of gender-based violence in Bosnia. Moreover, due to fragmentation in their government system, laws that are meant to protect women are not fully implemented due to either a lack of

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<sup>27</sup> Radončić, Dženana, Hodžić, Edin, & Sendić, Meliha. (2019). *Integral Regional Study. Is justice failing women survivors of violence? Action-oriented recommendations for effective prevention, protection and prosecution in the Western Balkans and Turkey*. The Center of Women's Rights (Bosnia and Herzegovina), United Nations Women regional programme on ending violence against women in the Western Balkans and Turkey.

<sup>28</sup> Ibid.

<sup>29</sup> Dauer, S. (2006). *The Global Advancement of Women: Barriers and Best Practices: Violence against Women: An Obstacle to Equality*. University of Maryland Law Journal of Race, Religion, Gender and Class.

funding for the projects or due to an improper allocation of funds to certain projects. This lack of follow through with implementation in Bosnia poses one of the biggest hurdles for trying to achieve successful and sustainable protection laws for women who have experienced DV.

### 1.2.2 Legal Framework in Bosnia

There is no given definition in Bosnian laws that explain violence against women and gender-based violence.<sup>30</sup> In Bosnian law all existing definitions of violence are gender neutral.<sup>31</sup> When defining violence legislation explain it as, “violence based on sex” which leaves out the notion of sex or gender.<sup>32</sup> While some may speculate that this is a great way of moving forward for Bosnia since this definition seems ahead of its time with regards to keeping a gender-neutral language in law. I would argue that this notion does the reverse. This is because in Bosnia they have such a heteronormative and patriarchal society that keeps women within a box and this box keeps them from being involved in important legislation that is supposed to support and protect them.<sup>33</sup> By not addressing *women* in their Law on Gender Equality, Bosnia actively leaves women out of the picture and does not fully address them. Ultimately this law continues to discriminate against women. Further, the Bosnian constitution does not include any specific provisions that touch on gender equality, nor do they actively promote gender equality in private

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<sup>30</sup> Bosnia and Herzegovina. (2003). Act of 21 May 2003 on gender equality in Bosnia and Herzegovina (Text No. 161). BIH-2003-L-64146.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> Bitenga, Ali. Kitoka, Alexander. and Mutondo, Moke. (2021). *Behind the weapon of war: sexual violence in wartime as a reflection of social attitudes towards women in peacetime*. Journal of Sexual Aggression. Pages 1-15.



and public spheres of life.<sup>34</sup> Lastly, the Bosnian constitution does not account for proper representation of women in their government.

In Bosnia, laws are carried out in a top-down manner and with that, there are many ways that the state can get overly involved when trying to carry out their entity's best interests. Through state law DV survivors are guaranteed protection, but due to the complexity of how the state is organized as well as differences in national standards among entities and the division in their cantons, all these obstacles keep laws intended to protect women from being fully implemented. Thus, keeping victims and survivors at the greatest risk. Due to the fragmentation of the state level governments, it is easy to see how the multidisciplinary nature of protection mechanisms need to be regulated but due to the government they cannot be followed through completely which leaves different levels of authority to carry out laws or avoid them completely.<sup>35</sup> These inconsistencies are the biggest threat to protecting victims, survivors and potential victims/survivors of DV.

“The Constitution of BiH as well as the entity constitution's guarantee freedom from discrimination based on sex and other things. At the state level, however, the law on gender and equality provides certain safeguard for survivors since it defines harassment and the role and obligations of courts and national authorities in protecting victims of domestic abuse.”<sup>36</sup>

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<sup>34</sup> Delbyck, Kyle. (2018). Executive Summary Report: *MAPPING OF POLICIES AND LEGISLATION ON VIOLENCE AGAINST WOMEN AND THE ISTANBUL CONVENTION IN BOSNIA AND HERZEGOVINA*. European Women's Lobby.

<sup>35</sup> Ibid.

<sup>36</sup> Bosnia and Herzegovina. (2003). Act of 21 May 2003 on gender equality in Bosnia and Herzegovina (Text No. 161). BIH-2003-L-64146.

Protective measures for victims/survivors of DV are rarely used in Bosnia and monitoring these kinds of measures are scarcely implemented. This lack of implementation can be traced to the patriarchal culture that engulfs the political life in Bosnia. The lack of these measures being executed properly can be seen in countless case studies when looking at survivors of DV. An example of this is, " ... courts routinely fail to take all aggravating circumstances into account, instead prioritizing mitigating circumstances"<sup>37</sup> this example shows through legal judgements that no matter what the woman does in her case to prove her points, the biased judiciary will routinely lessen the severity of whatever the survivor went through when sentencing male perpetrators of DV.

On another note, when trying to guarantee the right to judicial protection to victims of domestic abuse, the law in Bosnia does not define other protection nor support mechanisms for victims of DV.<sup>38</sup> These protections may be found at different levels within the legal framework on protection against DV amongst the different government levels but not on the overall state level. Generally speaking, the implementation of laws in Bosnia that are supposed to protect women are inefficiently carried out which results in mass atrocities of justice not prevailing the way it is designed to.

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<sup>37</sup> Delbyck, Kyle. (2018). Executive Summary Report: *MAPPING OF POLICIES AND LEGISLATION ON VIOLENCE AGAINST WOMEN AND THE ISTANBUL CONVENTION IN BOSNIA AND HERZEGOVINA*. European Women's Lobby.

<sup>38</sup> Ibid.

### 1.3 The Effects of Violence Against Women in Bosnia

“Achieving gender equality in social protection ... has its own challenges...” especially regarding the institutional -- or lack thereof -- set up in Bosnia.<sup>39</sup> One of the biggest burdens that is placed upon women who have endured DV is trying to find resources of any sort to help them handle their situations. This process entails, in the Bosnian case, a lack of; resources, funding, specialized healthcare systems for women, services for victims of VAW and DV. On top of that, special services such as rape crisis centers have not been established in the state nor do they possess well-funded shelters for women who are actively escaping DV in all areas of the country. Referring to the case study from the introduction, there were numerous barriers that affected our applicant Suzana, and in the end highlighted her numerous struggles.

Moreover, due to the lack of funding and irregularities with services being carried out equally across the country there has been no recent developments for data collection on DV since 2013.<sup>40</sup> There has yet to be a developed data collection method for DV in Bosnia especially with regards to highlighting domestic and intimate partner violence cases.(FOOTNOTE) Instead NGOs and other third parties are collecting their own data on DV in BiH to fill the gap.

Additionally, this third-party data suggests there needs to be more training for police officers and shelter officials to better help understand and ensure there is enough sensitivity allocated to the victims when dealing with cases that involve DV. Due to this knowledge on

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<sup>39</sup> Radončić, Dženana, Hodžić, Edin, & Sendić, Meliha. (2019). *Integral Regional Study. Is justice failing women survivors of violence? Action-oriented recommendations for effective prevention, protection and prosecution in the Western Balkans and Turkey*. The Center of Women's Rights (Bosnia and Herzegovina), United Nations Women regional programme on ending violence against women in the Western Balkans and Turkey.

<sup>40</sup> Council of Europe. Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO). (2020). *Report submitted by Bosnia and Herzegovina pursuant to Article 68, paragraph 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report)*.

stigma coming from authorities and officials, survivors usually keep matters in their own hands or are very reluctant to rely on state services to help provide them with justice and counseling. This can be seen, “when survivors try to chase reparations through legal proceedings, they are fraught with stigma from their communities, ineffective witness protection, major delays in accessing justice, and low conviction rates.”<sup>41</sup>

Violence based on gender and the violation of women’s rights in both public and private spheres frequently fail to deliver justice and grab the attention it needs. The organization for Security and Co-operation in Europe states, “Violence not only affects individual women: it endangers the wellbeing of entire families and society as a whole”.<sup>42</sup> This is why it is imperative to further discuss the barriers women face when trying to access justice in cases of DV.

#### 1.4 The Legal Barriers to Victims and Survivors of Domestic Violence

The OSCE found from their survey conducted in 2019 that every second a woman in Bosnia experiences some form of abuse, starting from the age of fifteen.<sup>43</sup> While it is common for women in Bosnia to experience some form of abuse, what is uncommon is women filing cases against their abusers. This is largely due to the obstacles and barriers that stand in the way of women receiving justice, such as the preliminary steps of receiving free legal aid. The United Nations Special rapporteur on the independence of judges and lawyers spoke about how “[l]egal aid is a right in itself ... the structure of the legal aid program ... should be autonomous,

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<sup>41</sup> Delbyck, Kyle. (2018). Executive Summary Report: *MAPPING OF POLICIES AND LEGISLATION ON VIOLENCE AGAINST WOMEN AND THE ISTANBUL CONVENTION IN BOSNIA AND HERZEGOVINA*. European Women’s Lobby.

<sup>42</sup> The Organization for Security and Co-operation in Europe, Mission to Bosnia and Herzegovina. (2018). *Combating Gender Based Violence*. OSCE.

<sup>43</sup> Organization for Security and Co-operation in Europe | Mission to Bosnia and Herzegovina. (2019). *Combating Gender Based Violence*. Report. OSCE.

independent, affective, sustainable and easily available”<sup>44</sup> Beyond this, states such as BiH hold the responsibility of ensuring these rights to those who encounter the law under their jurisdiction.<sup>45</sup> This quote most directly applies to the state of Bosnia with regards to their ‘free legal aid’ programs for victims of DV.

#### 1.4.1 Free Legal Aid for Victims of Domestic Violence in Bosnia and Herzegovina

Possessing access to free legal aid is imperative for victims of DV who cannot afford it alone. While Bosnia possesses a unique and incredibly complex government type, the state is not exempt from upholding its international and domestic legal obligations that have been laid down by international conventions and their own laws.<sup>46</sup> Yet, due to this complexity, the state runs into an overarching problem, and that problem is the lack of harmonization of their laws from all three of their entities: Federation of Bosnia and Herzegovina (FBiH), Republika Srpska (RS), and Brčko District (BD). Due to the lack of unification of laws for all levels of the Bosnian government, this space allows for the three entities to cherry-pick how they apply and implement laws. Bosnia has the Law on Free Legal Aid in BiH which orders how people may obtain free legal aid and which conditions go alongside this provision, this includes how to finance and control this law within the institutions of BiH, as well as how this Law should be implemented and supervised.<sup>47</sup> Unfortunately, as stated before, local levels of government in BiH do not harmonize how they implement this Law, leaving some Cantons to interpret and implement the Law differently than others.<sup>48</sup> As a consequence of the decentralization system in place in

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<sup>44</sup> The United Nations Human Rights Office of the High Commissioner. (2013). “*Legal aid, a right in itself*” – UN Special Rapporteur. The United Nations, News Report.

<sup>45</sup> Ibid.

<sup>46</sup> Official Gazette. (2016). BiH Official Gazette No. 83. Page 11.

<sup>47</sup> Ibid.

<sup>48</sup> Sarajevo Open Center. (2022). Interview.

Bosnia, the free legal aid system for women who have experienced DV is incredibly fragmented and underdeveloped which is shown through their legislation and institutional framework.<sup>49</sup>

International instruments such as the Istanbul Convention (IC) defines access to legal aid as something that the state must provide for victims under their own internal law. The problem with this is that Bosnia does not have a clear outline in their law on the federal level that encompasses all three of the entities to fully provide this service.<sup>50</sup> Furthermore, CEDAW stated in their sixth report that they recommended Bosnia to establish legal aid centers for women in all administrative units of the state to provide free legal aid to women and girls in both criminal and civil proceedings.<sup>51</sup> As a response to this Bosnia adopted the Law on Providing Free Legal Aid which is supposed to provide free legal aid in the form of service providers such as lawyers and legal advocates that are qualified to give legal advice.<sup>52</sup>

The reality of the present-day situation (2022) in Bosnia is that they have not advanced much since the sixth report.<sup>53</sup> The UN Women of BiH has found that these centers have not been established, with this follows that the preconditions for providing free legal aid that is prescribed in their law have not been achieved which leaves women who have experienced DV to continue

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<sup>49</sup> Miftari, Edita. (2019). *UN Women Analysis of the Capacities for the Implementation of Council of Europe Convention of Preventing and Combating Domestic Violence and Violence against Women in Police and Free Legal Aid Sector in Bosnia and Herzegovina*. United Nations Entity for Gender Equality and the Empowerment of Women. Page 26.

<sup>50</sup> Council of Europe. (2011). *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*. Article 57.

<sup>51</sup> Petrić, Aleksandra. (2020). *Bosnia and Herzegovina: Council of Ministers Adopted Concluding Comments and Recommendations of the CEDAW Committee*, Civil Society Strengthening Platform.

<sup>52</sup> The United Nations Committee on the Elimination of Discrimination Against Women (CEDAW). (2018). *Sixth periodic report submitted by Bosnia and Herzegovina under article 18 of the Convention, due in 2017*. Pages 53-54.

<sup>53</sup> Council of Europe: Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO). (2021). *The Foundation "United Women", Banja Luka, Bosnia and Herzegovina, Prepared by Aleksandra Petrić, Addendum to the Alternative Report of Nongovernmental Organizations from Bosnia and Herzegovina to GREVIO Group*.

to stay exceptionally vulnerable and under protected.<sup>54</sup> This lack of direction from the newly adopted law allows for the entity level governments to continue to move money and resources away from these legal aid centers to other projects since the law has not been fully implemented. On top of these rights not being met, “... this Law has not prescribed general standards and the capacities of free legal aid providers in BiH, and it only refers to legal aid in regard to institutions of BiH at the state level, meaning that victims of violence have very little benefit of this Law.”<sup>55</sup> Essentially, this law did not make an advancement to help protect the rights of women since it has not been implemented properly. From this knowledge, it is clear that women in Bosnia cannot turn to the state to help provide protection for them, instead, women must rely on the help of NGOs and other Civil Society Organizations (CSOs) that are set up within the country. Besides Bosnian entity level governments not fulfilling their obligation, another enormous problem arises which is the allocation of resources. While there are services available for women in the country they are normally concentrated only in major cities, which in turn leaves rural women more vulnerable and without proper protection. By not implementing an encompassing law that is directly linked to all entity levels, and for FBiH also the cantonal levels, both the positive and negative state obligations to protect women from violence are in violation under the current framework in Bosnia.

#### 1.4.2 Eligibility Criteria

Another problem that arises under the BiH Law on Free Legal Aid is the use of ‘eligibility criteria’ for survivors that are seeking to obtain these services. To the survivors

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<sup>54</sup> Miftari, Edita. (2019). *UN Women Analysis of the Capacities for the Implementation of Council of Europe Convention of Preventing and Combating Domestic Violence and Violence against Women in Police and Free Legal Aid Sector in Bosnia and Herzegovina*. United Nations Entity for Gender Equality and the Empowerment of Women. Page 22.

<sup>55</sup> Ibid.

defense the ‘free legal aid’ directive is prescribed by multiple laws, the issue at hand is that these laws are not harmonized. In theory there are no grounds for criteria that the women need to meet. The reality of this situation is the opposite. When women come to these centers that provide free legal aid, they are met with a list that limits survivors to accessing this service.<sup>56</sup> This list outlines those who are eligible for the right to free legal aid on the basis of: If the woman is unemployed, if the woman is in a very unfavorable financial circumstance, if the woman has children, and the list goes on. The UN Women in Bosnia have stated the reality of the issue, “[v]ictims of violence here are provided free legal aid not based on their status of a victim of violence but based on their financial status.”<sup>57</sup> This state violation is seen in the case study of Suzana who is a survivor from the Republika Srpska entity. When Suzana applied for free legal aid, she was denied even though she made below the national average for her income and was single-handily providing for her teenage daughter at the time of her assault. The center told her that because she was employed and received a form of income, she was not eligible to receive access to the free legal aid service provided by the state.<sup>58</sup> To further complicate matters, Article 31 and 32 of FBiH Law on Protection from Domestic Violence states that the right to free legal aid is not up to the entity level to deliberate on, instead it trickles down to the cantonal

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<sup>56</sup> Petrić, Aleksandra. (2020). *Bosnia and Herzegovina: Council of Ministers Adopted Concluding Comments and Recommendations of the CEDAW Committee*, Civil Society Strengthening Platform.

<sup>57</sup> Miftari, Edita. (2019). *UN Women Analysis of the Capacities for the Implementation of Council of Europe Convention of Preventing and Combating Domestic Violence and Violence against Women in Police and Free Legal Aid Sector in Bosnia and Herzegovina*. United Nations Entity for Gender Equality and the Empowerment of Women. Page 27.

<sup>58</sup> Radončić, Dženana, Hodžić, Edin, & Sendić, Meliha. (2019). *Integral Regional Study. Is justice failing women survivors of violence? Action-oriented recommendations for effective prevention, protection and prosecution in the Western Balkans and Turkey*. The Center of Women’s Rights, United Nations Women regional programme on ending violence against women in the Western Balkans and Turkey. Pages 56-57.



governments.<sup>59</sup> Only the cantons can determine the right to legal aid and here the cantonal laws on legal aid all differ from each other to some extent.

One way that CSOs and NGOs are trying to alleviate this problem is by offering legal assistance in place of the governments, but they are limited to providing legal representation.<sup>60</sup> Instead, the CSOs and NGOs try their best to educate the survivors on information and provide legal advice, regardless of the survivors' background. The issue here is that although there is a great effort put forth by NGOs, they are limited because they, "... have little to no capacities to provide legal representation in court, while governmental centers do provide legal representation when needed but have very little time ...".<sup>61</sup> The reality is that centers that are provided by the government are understaffed, underfunded and overworked. This problem of understaffed centers is that they cannot deliver quality services to survivors.

This lack of advancement and redistribution of funds to further develop this issue of access to free legal aid requires further pressure and attention inside the government developments of Bosnia and Herzegovina. The United Nations states that, "legal aid is a critical part of victims/survivors' access to, and understanding of, the complicated legal system inside of Bosnia."<sup>62</sup> This service of legal aid also covers the explanation of the remedies to which the survivors are entitled to.<sup>63</sup> Proper legal representation is essential for victims of domestic abuse in Bosnia. This allows them to have a higher likelihood of having a positive outcome as well as a

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<sup>59</sup> Lozančić, Niko. (2005). *Law On Protection From Domestic Violence*. The Constitution of the Federation of Bosnia and Herzegovina. Articles 31 and 32.

<sup>60</sup> Sarajevo Open Centre. (2020). *Orange report 6. Report on the State of Human Rights of Women in Bosnia and Herzegovina in 2020*. Sarajevo Open Centre. Page 32.

<sup>61</sup> Miftari, Edita. (2019). *UN Women Analysis of the Capacities for the Implementation of Council of Europe Convention of Preventing and Combating Domestic Violence and Violence against Women in Police and Free Legal Aid Sector in Bosnia and Herzegovina*. United Nations Entity for Gender Equality and the Empowerment of Women. Page 27.

<sup>62</sup> Ibid. Page 38.

<sup>63</sup> Ibid.

real fighting chance of winning their case when all the criteria can be met.<sup>64</sup> Due to how poorly Bosnia has advanced with the implementation of their Law on Free Legal Aid it can be concluded that there is a slim to none chance that survivors will be able to make it through the entire legal process and come out feeling victorious in achieving justice.<sup>65</sup>

What is evident in most cases of violence against women in Bosnia is that for a survivor to be able to receive free legal aid she must meet certain criteria, when this woman should be able to receive access to aid regardless of her personal or financial situation.<sup>66</sup> An example of this is from the case study from the beginning of this thesis. In the example Suzanna, was not able to receive free legal aid due to the fact that she was employed. Despite the fact that Suzanna was making less than the minimum wage in Bosnia and on top of this she was single handily supporting her own daughter.<sup>67</sup> The reality of this Law is that there should not be criteria women have to ‘meet’ to be able to access this necessity, but many women are turned away when they should not be.<sup>68</sup>

Therefore, with the rate of DV occurring in BiH, it is imperative that there is a continuation of building a system of free legal aid that will ensure equal and non-discriminatory access to free legal aid across BiH.<sup>69</sup> These efficient institutions for free legal aid that deliver quality service to their clients will help ensure effective access to justice and fairness in the country.

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<sup>64</sup> Sarajevo Open Centre. (2020). *Orange report 6. Report on the State of Human Rights of Women in Bosnia and Herzegovina in 2020*. Sarajevo Open Centre. Page 33.

<sup>65</sup> DCAF; Geneva Centre for Security Sector Governance. (2017). *Prosecutors' Domestic Violence Handbook for Bosnia and Herzegovina*. Atlantic Initiative.

<sup>66</sup> Fondacija Lokalne Demokratije. (2022). Interview.

<sup>67</sup> Radončić, Dženana, Hodžić, Edin, & Sendić, Meliha. (2019). *Integral Regional Study*. The Center of Women's Rights, Regional programme on ending violence against women in the Western Balkans and Turkey.

<sup>68</sup> United Women Banja Luka. (2022). Interview.

<sup>69</sup> United Nations Development Programme. (2013). *Brochure on Free Legal Aid Bosnia and Herzegovina*. UNDP.

## 1.5 Other Barriers to Victims and Survivors of DV

There are many other forms of barriers victims and survivors of DV face in Bosnia, these barriers can be seen as to ‘why’ victims/survivors do not wish to either report or discuss the violence that has been inflicted upon them as well as why reporting data does not always match.

### *Social Stigma*

Bosnian society is engulfed by deeply patriarchal stereotypes and attitudes regarding the position of where men and women should stand, this largely comes from the aftereffects left on the population from war.<sup>70</sup> While Bosnians were trying to figure out their new identity in the 20th century it largely came at the price of stigmatizing women and allowing men to feel macho and in charge. What comes out of this is the community impact on victims of VAW and DV. The stigmatization of women who have endured violence are largely regarded as either the problem, the source or survivors and victims are disregarded by others disbelieving everything they say. What is worse is the fact that when women get the courage to seek help from state authorities, authorities that are intended to protect them, they are largely and simply flat out ignored. This lack of understanding creates a large impact on the population as well as creates even more barriers when trying to seek justice.

### *Financial Barriers*

“Kulwicki and colleagues stated that the inability to maintain economic freedom from an abuser increased problems of stable childcare and transportation while reducing access to legal

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<sup>70</sup> UN Women Regional Office for Europe and Central Asia and UNFPA Regional Office for Europe and Central Asia. (2022). *Baseline study on gender norms and stereotypes in the countries of the Eastern Partnership*. Case Study.

services.”<sup>71</sup> From the earlier case study, the applicant never received any financial compensation in her case. As frustrating as this is, this result is typically the case in Bosnia. This can be seen. The financial barrier plays out especially when trying to go to court because what is needed to seek justice in these cases is money to fund the entire operation. Yes, operation. From the moment the survivor decides to press charges she is faced with what can feel like an infinite number of financial barriers. Now the victim/survivor needs to pay forward for a lawyer, psychologists, shelter, the list goes on from there.

### *Service Provider Barriers*

Outside of the courtroom, the government has an obligation to provide a range of services to DV survivors which includes legal aid, shelter, access to health care, psychological assistance, and social protection services. But due to the poor implementation of these regulations and laws this does not come to fruition. The reality of the situation is that women do not get access to these services that they are entitled to.<sup>72</sup>

The fragmentation continues in Bosnia as each law determines which institution is held responsible for responding to victims/survivors. This includes institutions such as the police, the centers for social work and so on. Due to the level of coordination that is required for all of these services to be fully implemented it makes sense in the Bosnian example that each entity would handle and carry out these rules according to their own rules. This allows for yet again, more

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<sup>71</sup> Grubb, J. A., & Muftić, L. R. (2018). A Comparative Analysis of Domestic Violence Shelter Staff Perceptions Regarding Barriers to Services in Bosnia and Herzegovina and the United States. *International journal of offender therapy and comparative criminology*, 62(11), 3278–3297.

<sup>72</sup> Radončić, Dženana, Hodžić, Edin, & Sendić, Meliha. (2019). *Integral Regional Study. Is justice failing women survivors of violence? Action-oriented recommendations for effective prevention, protection and prosecution in the Western Balkans and Turkey*. The Center of Women’s Rights (Bosnia and Herzegovina), United Nations Women regional programme on ending violence against women in the Western Balkans and Turkey.

inconsistencies and lack of implementation.<sup>73</sup> There is an overall lack of service providers for victims of DV in Bosnia.

### *Shelters and Counseling*

The system of safe houses is a great example of further barriers to DV:

“The safe houses, which offer psychological, social, and legal aid, are run by designated CSOs. Women’s CSOs describe this number as grossly insufficient. The RS and FBiH 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 safe house, however, is the only such institution with consistent government funding from Sarajevo Canton.”<sup>74</sup>

What is left to say is funding is largely inconsistent and there is a lack of immediate and timely remedies that are available for victims and survivors of DV.

### *Rape Crisis Centers*

There is an absence of specialist services for victims of rape and victims of sexual violence in Bosnia. There are no crisis centers, nor are there services of doctors and forensic examinations that should be there in supporting the cases of trauma and counseling for survivors of VAW.<sup>75</sup> On top of this due to a lack of centers established, victims find themselves in a predicament when it comes to receiving a rape kit, more specifically a kit that could be used as evidence in a court of law. This is because to receive this specific type of rape kit, it must first be

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<sup>73</sup> Ibid.

<sup>74</sup> Delbyck, Kyle. (2018). Executive Summary Report: *MAPPING OF POLICIES AND LEGISLATION ON VIOLENCE AGAINST WOMEN AND THE ISTANBUL CONVENTION IN BOSNIA AND HERZEGOVINA*. European Women’s Lobby.

<sup>75</sup> Radončić, Dženana, Hodžić, Edin, & Sendić, Meliha. (2019). *Integral Regional Study. Is justice failing women survivors of violence? Action-oriented recommendations for effective prevention, protection and prosecution in the Western Balkans and Turkey*. The Center of Women’s Rights (Bosnia and Herzegovina), United Nations Women regional programme on ending violence against women in the Western Balkans and Turkey.

ordered by the Court for proper medical providers to carry out. The downside to this set-up is that it leaves out the human aspect and respect for the victim. While the authorities order this kit, the victim must patiently wait — usually still in the clothes she was raped in — for hours at a time to be properly examined instead of being examined the moment she arrives at the medical center.<sup>76</sup>

## 1.6 Conclusion

The fragmentation of laws, the Bosnian governmental set-up, the legal and social barriers as well as the lack of harmony of implementing laws in Bosnia all lead to issues that victims/survivors of DV must wrestle with when trying to achieve justice against their perpetrators. Overall, the biggest issue with fragmentation is that in Bosnia their expansive legal systems are set to address the failure and state due diligence properly, but this does not happen in reality. Additionally, access to services for victims plays a negative impact on them because of the lack of clarity in the regulation framework that has been implemented in Bosnia. International Instruments and Institutions alike do not report enough on these topics in Bosnia because the Bosnian system is *that* complex of an issue that it takes a large amount of effort and dedication of time to fully understand exactly what is happening on the inside of their institutions. Lastly, victims of all types of violence in Bosnia do not know or they are not well informed of the civil responsibilities that state officials have in preventing and protecting VAW from occurring in the country.

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<sup>76</sup> United Nations Women. (2022). Interview.

## Chapter 2 | Understanding the Bosnian Context

Understanding the Bosnian context of nationalism, the post-war effect on women in Bosnia, and how the Dayton Agreement influenced Bosnia's modern-day constitutional set up is crucial for comprehending the inequalities that are prevalent in the struggle that victims and survivors of DV must conquer in attempting to achieve justice in Bosnia.

To begin there needs to be an acknowledgement of the use of patriarchal views of society in Bosnia. Despite Bosnia's large conservative views of gendered roles in society which continue to persist and be relevant on multiple levels, there is still frequent gender stereotyping in their politics which holds women back due to the widespread discrimination women face at many levels of Bosnian society. An example of this can be seen through the Law on Gender Equality, a law that is still not fully implemented and remains this way due to its' vague and genderless language.<sup>77</sup> Additionally, women's involvement in politics continues to be hotly contested, with few women serving in political roles due to the multitude of barriers women face, most significantly stigmatized gender roles and widespread VAW. The main issue when trying to understand the Bosnian context ties back to the favored view of socio-cultural attitudes of patriarchy that emphasizes a male dominated view of society that leaves women's participation out.<sup>78</sup>

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<sup>77</sup> Act of 21 May 2003 on Gender Equality in Bosnia and Herzegovina (Text No. 161). This law supplies the promotion and protection of sex equality, guarantees equal opportunities to all citizens in all areas, public or private, and prevents direct or indirect sex discrimination. Bosnia and Herzegovina. Unofficial English translation. (2005). UNDP- Bosnia and Herzegovina, pp. 101-114.

<sup>78</sup> Pozarny, P., & Rohwerder, B. (2016). *Priority gender issues in Bosnia and Herzegovina; Georgia; Moldova; Serbia; and Ukraine – with consideration to gender and governance* (GSDRC Literature Review Report 1372). Birmingham, UK: GSDRC, University of Birmingham. Pages 4-16.

## 2.1 Cultural Context of the Male Dominated Society

The topic of culture to Bosnians is an extremely sensitive issue. After enduring the breakup of Yugoslavia and the atrocities that came with the Bosnian Genocide in the late 1990s, the Bosnian identity and culture that we know of today can be traced back to found views of nationalism. In essence, culturally conservative Bosnians tend not to stray far from Bosnian heteronormative and nationalistic cultural values, “[t]he relationship between nationality and sex has historically been constructed in ways that have supported patriarchal relations, traditional or ‘natural’ gender divisions and roles,” amongst Bosnian society.<sup>79</sup> Anti-feminist sentiments are based on strongly held cultural beliefs in favor of patriarchal understandings of society, most of which are inherently misogynistic. Conservative Bosnian culture upholds their strong male-dominated beliefs through their representatives and through their politics. Through slandering the female community, the nationalistic conservative viewpoint enforces and upholds their ideals of a heteronormative and patriarchal society, that they believe Bosnians should live in, and that should be upheld within the borders of their state.<sup>80</sup> To fully understand the story of Bosnia – or as an entry point of understanding the country— one must trace back to the aftermath of the Socialist Yugoslavian War, because only then can we as an audience start to understand the transformations that affected post-war Bosnia.<sup>81</sup>

<sup>79</sup> Swimelar S. (2016). *The Struggle for Visibility and Equality: Bosnian LGBT Rights*. In: Sloomaeckers K., Touquet H., Vermeersch P. (eds) *The EU Enlargement and Gay Politics*. Gender and Politics. Palgrave Macmillan, London.

<sup>80</sup> Stojavljevic, Jovanka. (1995). *Women, Conflict, and Culture in Former Yugoslavia*. Gender and Development, 3(1). Pages 36–41.

<sup>81</sup> Helms, E. (2013). *Innocence and victimhood: Gender, nation, and women’s activism in postwar Bosnia-Herzegovina*. University of Wisconsin Press. Page 49.



## 2.2 Post-War Effects on Women in Bosnian Society

Understanding the gendered norms of Bosnian society is just the tip of the iceberg, to better comprehend why women are in such a predicament when trying to achieve justice for violence against them today in Bosnia it is impeccably key to understand why the war broke out to begin with and how this war and the damage it cost engraved itself into Bosnian history. One form of branding can be seen by opposing forces taking advantage of Bosnian women through rape.<sup>82</sup>

Bosnia's war began with the dissolution of Yugoslavia, multiple countries then followed in these independence movements.<sup>83</sup> In summary, the war originally began with a fight for independence from Yugoslavia –mainly from Serbia— but was later turned into a conflict of ethnic division of the territories which put women at the forefront of being victims of rape.<sup>84</sup> This paper does not have the adequate amount of space to dive deep into rape being used as a weapon, regardless of this limitation, it is still imperative to take note that the use of rape as a means of inflicting sexual violence against women played a key role in shaping Bosnian history and cannot be overlooked. “Bosnia and Herzegovina is one of the countries where sexual violence, mass rapes, rape camps and the humiliation of women was clearly used as a weapon of war.”<sup>85</sup>

Rape can be seen as a domineering, aggressive and humiliating act.<sup>86</sup> Male soldiers engage in rape because they want to engage in violence, because they want to display their power, because they want to show that they can take control of their enemies' woman and humiliate and

<sup>82</sup> Allen, Beverly. (1996). *Rape Warfare in Bosnia-Herzegovina: The Policy and the Law*. The Brown Journal of World Affairs, 3(1). Pages 313–323.

<sup>83</sup> Reid-Cunningham, A. (2008). *Rape as a Weapon of Genocide*. Genocide studies and prevention, 3(3). Pages 279–296.

<sup>84</sup> Gërxi, Albana. (2017). *Women a(t) Battlefield*. ILIRIA International Review, 7(2), Pages 117–118.

<sup>85</sup> Gërxi, Albana. (2017). *Women a(t) Battlefield*. ILIRIA International Review, 7(2), Page 117.

<sup>86</sup> Stiglmeier, Alexandra. (1994). *The Rapes in Bosnia-Herzegovina*. Mass Rape: The War Against Women in Bosnia-Herzegovina. University of Nebraska Press. Page 80.

annihilate them.<sup>87</sup> The use of rape as weapon against women can still be felt today in Bosnia.<sup>88</sup>

This imbalance of control between men and women that occurred during the Bosnian war has marked their history and continues to play a role in conservative Bosnian politics and society today.<sup>89</sup> The stigma that is tied to rape especially in BiH is another heavy factor when putting into perspective why survivors of VAW and DV do not report or talk about it, their history is too recent, and the wounds have not healed.

Apart from rape, another important theme that comes out of the war is that of gendered nuances. In post-war Bosnia, “Bosnian women were reduced to a caricature image of silent victimhood, one that was intensified by Orientalist assumptions about the Muslim, Balkan society in which they were said to live.”<sup>90</sup> Although the West did not comprehend the multifaceted war that occurred, what made matters worse in BiH was that the international community did not pay close enough attention to the shift in direction which the country took post-war.<sup>91</sup> “Women’s dignity and right to participate was upheld, but on the basis of their function as bearers and socializers of new generations.”<sup>92</sup> Conservative Bosniacs saw women as the primary duty bearers of creating families and upholding the image of ‘home’ and thus those in power at the time kept this idea in mind when making major decisions for the country, unsurprisingly leaving women out of the conversation.<sup>93</sup> In contemporary Bosnia, women can be

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<sup>87</sup> Ibid. Page 84.

<sup>88</sup> Crawford, K. F. (2017). *Wartime sexual violence : from silence to condemnation of a weapon of war*. Georgetown University Press.

<sup>89</sup> Sarajevo Open Society Centre. (2022). Interview.

<sup>90</sup> Helms, E. (2013). *Innocence and victimhood: Gender, nation, and women’s activism in postwar Bosnia-Herzegovina*. University of Wisconsin Press. Page 64.

<sup>91</sup> Crawford, K. F. (2017). *Wartime sexual violence : from silence to condemnation of a weapon of war*. Georgetown University Press.

<sup>92</sup> Helms, E. (2013). *Innocence and victimhood: Gender, nation, and women’s activism in postwar Bosnia-Herzegovina*. University of Wisconsin Press. Page 74.

<sup>93</sup> Pozarny, P., & Rohwerder, B. (2016). *Priority gender issues in Bosnia and Herzegovina; Georgia; Moldova; Serbia; and Ukraine – with consideration to gender and governance*. University of Birmingham.

seen as the sign and reminder of the injustice that had occurred and of female victimhood which alluded to war time rape.<sup>94</sup> While these atrocities have not been fully resolved it can be understood why women still feel the pressure and stigma that revolve around rape. Furthermore, many women see the slim margin of survivors of wartime rape find justice in their cases. Knowing these odds many victims of DV and rape do not seek out authorities because these survivors understand the reality of reporting their cases to the state which often do not end in victory for the victim.

Male-dominated politics were emphasized during the time of transition when Bosnia was coming out of the war; it was especially hard for women to get a word in regarding their rights during this transition, this is largely in part because women were left out decision making roles.<sup>95</sup> Women were never invited to the table to discuss manners in the first place.<sup>96</sup> Today the post-war laws and institutions that are aimed at implementing gender equality have yet to be successful in shifting attitudes away from women taking a more traditional role in society.<sup>97</sup> This lack of change can be tied back to patriarchal values of a male-dominated society held by conservative political figureheads and women not being invited to the table to partake in important decision making.

### 2.3 Dayton and the Constitutional Set Up

Prior to becoming post-war Bosnia, Bosnian leaders had to strike a deal not only amongst themselves but with the international community, but still not women, to try and achieve peace

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<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> Helms, E. (2013). *Innocence and victimhood: Gender, nation, and women's activism in postwar Bosnia-Herzegovina*. University of Wisconsin Pres. Pages 74-75.

<sup>97</sup> Council of Europe. (2020). Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), *Report submitted by Bosnia and Herzegovina pursuant to Article 68, paragraph 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report)*.

in their nation. This action plan led to the signing of the Dayton Agreement, which helped bring three and a half years of war in Bosnia to an end on 21 November 1995.<sup>98</sup>

### 2.3.1 What is Dayton?

The Dayton Agreement (hereafter Dayton) is no ordinary peace agreement, most peace agreements are used to cease hostilities and wars, but Dayton goes beyond these simple means. Instead, Dayton brushes aside the short-term goals of ending conflicts with a new development of long-term political solutions that create new roles for the international community to be involved through a process of ‘democratization’ of the country that are also embedded into the Bosnian constitution.<sup>99</sup> The implementation of Dayton meant a new reliance on international supervision to help ensure the new Bosnian framework was put into effect properly.<sup>100</sup> These new roles of international involvement set forth in Dayton were inscribed into the new Bosnian constitution; essentially meaning that outside administrators would be allocated direct power in Bosnia.<sup>101</sup> This point can help audiences understand why there is still such a heavy influence of international actors meddling and helping in present day issues, such as combating DV in BiH.<sup>102</sup>

Essentially, Dayton was put in place to be a one-year assistance guide for transitioning the Bosnian administration to take on a new form. Instead, there was an indefinite extension of this first administrative framework and the continuation of the ‘democratization process’ in Bosnia which became the new international experiment in political engineering.<sup>103</sup> In short, Dayton allowed for important decision-making powers to be held by international administrators

<sup>98</sup> Chandler, D. (2000). *Bosnia: Faking democracy after Dayton*. London: Pluto Press. Page 1.

<sup>99</sup> Sebastián, Sofía. (2014). *Post-War Statebuilding and Constitutional Reform in Divided Societies: Beyond Dayton in Bosnia*. Palgrave MacMillan.

<sup>100</sup> Ibid.

<sup>101</sup> Chandler, D. (2000). *Bosnia: Faking democracy after Dayton*. London: Pluto Press. Page 1.

<sup>102</sup> International Crisis Group. (1999). *Is Dayton Failing? Bosnia Four Years after the Peace Agreement*. International Crisis Group (ICG).

<sup>103</sup> Ibid.

that produced a dependency on international organs – that audiences can still see in place today – rather than establishing a stable democratic self-government, in addition international involvement was laid down and was regarded as non-negotiable in the agreement.<sup>104</sup>

What this means is that the top three ethnic leaders of the country were at the decision-making table alongside the international community during the negotiations, signing and ratification of Dayton.<sup>105</sup> Who was left out of influencing their new constitution? Bosnian women. The significance of this agreement can be seen in the complete lack of Bosnian female voices and presences at these imperatively important events. Bosnian women did not get to help facilitate negotiations nor be heard when it came to setting up the instructions that their country would be run and led by. The lack of acknowledgement of women in the Bosnian constitution proves this.

### 2.3.2 Dayton's Role in the Current Constitutional Framework

What is important about Dayton's role in Bosnia's current framework leads back to the distinction and rules that are associated with the three ethnicities in the country that superseded the importance of women being involved in this process. These rules and distinctions spelled an abundance of discrimination cases against the constitution in Bosnia but more importantly this focus on discrimination against ethnicities has side-lined women and the women quota. This discrimination can be seen in two cases from the ECtHR which have declared that the set-up in the Bosnian constitution violates Article 14 of the ECHR, which can be seen in two important cases: *Sejdić and Finci v. Bosnia and Herzegovina* (27996/06 and 34836/06) and *Zorić v. Bosnia and Herzegovina* (application no. 3681/06). However, what is even more relevant is that

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<sup>104</sup> Ibid.

<sup>105</sup> Benedek, W. (Ed.). (1999). *Human rights in Bosnia and Herzegovina after Dayton: from theory to practice*. Martinus Nijhoff Publishers.

beyond these two cases in terms of discrimination, for Bosnia there are no cases on VAW, and no Article 14 violations regarding DV that have been brought to the ECtHR. Thus, it can be understood that discrimination and distinction of ethnicities are embedded in their constitution. This is problematic not only from an ethnic point of view but also from a gendered point of view with regards to discrimination.<sup>106</sup> According to Chandler, the result of this discrimination and lack of Bosnian voices being made more significant during the drafting of the agreement meant that Dayton was spoon fed to the country without ever allowing the state to speak for itself.<sup>107</sup>

### 2.3.3 Dayton's Role Today

It may come as a shock but under Dayton it set forth that Bosnian citizens were to be insured the highest level of internationally recognized human rights and fundamental freedoms.<sup>108</sup> This is intriguing with today's human rights climate in Bosnia, especially regarding justice surrounding victims of DV, but at the time of its creation Bosnians were guaranteed more human rights protections than those found anywhere else in the world.<sup>109</sup> There was little input that Bosnian politicians or lawyers could add into Dayton and thus left many Bosnian points of views out of their own constitution.<sup>110</sup> This is important because today it can be seen that Bosnians did not have much say in how their country was 'recreated'.<sup>111</sup>

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<sup>106</sup> The United Nations General Assembly Security Council. (1996). *The Situation in Bosnia and Herzegovina*. Paragraph 10.

<sup>107</sup> Chandler, D. (2000). *Bosnia: Faking democracy after Dayton*. London: Pluto Press. Page 111.

<sup>108</sup> United States Central Intelligence Agency. (1995). *Dayton Agreement, 24 November: Bosnia and Herzegovina*. Annex 4, Article 2, Paragraph 1.

<sup>109</sup> Chandler, D. (2000). *Bosnia: Faking democracy after Dayton*. London: Pluto Press. Page 92.

<sup>110</sup> Ibid. Page 94.

<sup>111</sup> Ibid.

## 2.4 Conclusion

Finally, it can be seen and followed that from the breakup of Yugoslavia through war and into the new setup of the constitution and modern-day Bosnian society there has been a lack of consensus with inviting Bosnian women to make imperative decisions, for not only them but their country. This lack of prioritization of women being included in all parts of decision making when it came to state building and constitution making has left an effect on women being seen as disproportionate and discriminated against on multiple levels.<sup>112</sup> These troubles refocus on the Bosnian situation today where women have been left out for so long that they can no longer follow how they will be able to achieve justice in their own system because Bosnian men who are in power have not given enough space to allow women's point of view to help shape Bosnian institutions. The dialogue between feminist ideology and nationalistic ideology seem to highlight their differences over voluntarily looking to find collective grounds amongst the two.<sup>113</sup>

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<sup>112</sup> Hrubec, Marek, (2010). "Preconditions of an Intercultural Dialogue on Human Rights", *Veritas*, Vol. 55, No. 1, 2010. Page. 185.

<sup>113</sup> Ibid. Page. 188.

## Chapter 3 | The Dayton Peace Agreement and International Instruments

From Dayton there are critiques that came about, one procedural and the other substantive. As to the former, Bosniacs and Bosnian women were never really invited to the table when it came to decision making. Dayton really focuses in on the creation of ethnic quotas for the country and despite the knowledge about what happened to women in particular in Bosnia there was little to nothing embedded into the Bosnian constitutional framework to ensure some representation or remedial structure for women's political participation in the aftermath of the War.<sup>114</sup> Further, this lack of representation and lack of remedial structure can be seen as a causal link or reasoning as to why women, especially victims and survivors of DV, face so many issues today in Bosnia when trying to achieve justice in their system.<sup>115</sup>

Beyond this lack of acknowledgement of women in the Bosnian constitution, another problem arises due to Dayton setting up Bosnia to be heavily reliant on international organs and instruments.<sup>116</sup> This issue of dependency on outside sources was a key theme that was highlighted in every interview that I conducted while in Bosnia and this theme of dependency clarified that there is a lack of funding not only within the country for victims of DV but needed from outside sources.<sup>117</sup> This begs the question, what can the international community do for BiH? This chapter will cover international instruments that help support the rights of victims and survivors of DV in Bosnia, highlight key infringements from BiH that need to be followed from specific Articles derived from the Istanbul Convention (IC) and CEDAW reports.

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<sup>114</sup> Gilbert, A., & Mujanović, J. (2015). *Dayton at twenty: towards new politics in Bosnia-Herzegovina*. Southeast European and Black Sea Studies, 15(4), Pages 605-610.

<sup>115</sup> Ibid.

<sup>116</sup> Chandler, D. (2000). *Bosnia: Faking democracy after Dayton*. London: Pluto Press. Page 101.

<sup>117</sup> Interviews. (2022). NGOs in BiH.



### 3.1 International Instruments on Women's Rights

There are many international instruments supporting women's rights and Bosnia has signed and ratified the most relevant treaty on DV and VAW which is the Istanbul Convention.<sup>118</sup> This treaty outlines the general legal and social services that states are obligated to provide, amongst many other services. Alongside this treaty, judicial bodies are required from the Convention on the Elimination Of all forms of Discrimination Against Women (CEDAW) to ensure legal procedures are impartial and fair as well as ensuring that the legal provisions are interpreted without being influenced by gender stereotypes.<sup>119</sup>

Unfortunately, these safeguards that are put in place through international instruments do not directly translate to their implementation in the Bosnian system. This leads to the issue of this section: Has the Bosnian government fully implemented the safeguards that are set forth in the international conventions that they have ratified, and do they amount to real safety and protection for victims of DV? This section will explore CEDAW reports and specific Articles from the IC and further examine where BiH is failing to follow what is laid down in these international Conventions.

#### 3.1.1 The Convention on the Elimination of Violence Against Women

One of the most extensive instruments when dealing with women's rights is well laid down in CEDAW. It is an international treaty whose main purpose is to bring equality between the sexes by having it lay down state responsibilities to ensuring women's access to and equal

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<sup>118</sup> Council of Europe. (2011). *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*. Bosnia and Herzegovina Signed and Ratified in 2013.

<sup>119</sup> Petrić, Aleksandra. (2020). *Bosnia and Herzegovina: Council of Ministers Adopted Concluding Comments and Recommendations of the CEDAW Committee*. Civil Society Strengthening Platform. Paragraph 26 (c).

possibilities in multiple sectors.<sup>120</sup> While CEDAW does not specifically handle dealing with violence against women, it does provide protection to women with many of its anti-discrimination clauses.<sup>121</sup> Additionally, CEDAW issues many recommendations that address gender-based violence in countries and the Convention can be used as a source of material that legally binds states at the international level for addressing the issue of DV and VAW.

What CEDAW does so beautifully is that it conceptualizes women's rights as human rights. Furthermore, women are addressed to be given the right and the opportunity to present their own individual complaints through CEDAW's Optional Protocol.<sup>122</sup> This is a feature that some women in Bosnia have been found success in.<sup>123</sup>

### 3.1.2 CEDAW Reports

Article 36 of the Law on Protection from Domestic Violence says the Government of the Federation of Bosnia Herzegovina is obliged to adopt strategic documents in the area of sustainability of activities and procedures aimed at preventing cases of DV that are guaranteed through this Law.<sup>124</sup> The reality from CEDAW reports shows that there is a lack of follow through when it comes to implementation of laws in Bosnia and thus leaves victims and survivors of DV in vulnerable situations.<sup>125</sup>

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<sup>120</sup> UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, Page 13.

<sup>121</sup> Ibid.

<sup>122</sup> CEDAW. (2020). *Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning communication*. S.H. v Bosnia, No. 116/2017.

<sup>123</sup> Ibid.

<sup>124</sup> The Law on Protection against Domestic Violence was adopted in May 2005 in the Federation of Bosnia and Herzegovina and in December 2005 in the Republika Srpska.

<sup>125</sup> CEDAW. (2019). *CEDAW/C/BIH/CO/6: Committee on the Elimination of Discrimination against Women: Concluding observations on the sixth periodic report of Bosnia and Herzegovina*. Periodic Report. United Nations.

Even the lower levels of government have to oblige by Article 37 of the Law on Protection from Domestic Violence in the cantonal governments, and they are obliged to adopt programs of measures to prevent and combat DV through the establishment of coordinated bodies and corporations with different levels of government and professionals.<sup>126</sup> This Law also incorporates the operation of multisectoral teams and helps secure horizontal and vertical links between all actors in the state when working with cases of DV as well as mechanisms for the implementation of strategies and policies when it comes to DV in Bosnia.<sup>127</sup>

### 3.2 The Istanbul Convention & Examples of BiH Failure to Protect Victims of DV

This section will highlight major failures from the state to deliver on certain Articles from the IC that need to be in place to properly support victims and survivors of DV in Bosnia. Firstly, as a prevention strategy state authorities should implement mandatory training to best support victims and survivors of DV in Bosnia. Instead, when it comes to training that has been redone while there has been some progress made in certain sectors of the police force in Bosnia it seems as though it is disproportionate to the entirety of the Bosnian police force.<sup>128</sup> Studies show that only 1000 people have signed up to learn and educate themselves on how to deal with victims of DV in Bosnia.<sup>129</sup> On top of this, it is also predominantly women who take on this role of trainings in the police sector, which leaves men who deal with victims of DV to be ill equipped in handling this issue.<sup>130</sup> Training needs to encapsulate a more progressive and victim centered

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<sup>126</sup> The Law on Protection against Domestic Violence was adopted in May 2005 in the Federation of Bosnia and Herzegovina and in December 2005 in the Republika Srpska.

<sup>127</sup> CEDAW. (2019). *CEDAW/C/BIH/CO/6: Committee on the Elimination of Discrimination against Women: Concluding observations on the sixth periodic report of Bosnia and Herzegovina*. Periodic Report. United Nations.

<sup>128</sup> UN Women. (2022). *Changing attitudes and behaviour of police officers in Tuzla Canton, Bosnia and Herzegovina, using communications for behavioural impact (COMBI)*. Evaluation Report. Pages 22-24.

<sup>129</sup> OSCE. (2000). *OSCE produces training film on domestic violence for Bosnian police officers*. Press Release and Video. <https://www.osce.org/bih/52720>

<sup>130</sup> United Nations Office on Drugs and Crime. (2021). *THE HANDBOOK ON GENDER-RESPONSIVE POLICE SERVICES For Women and Girls Subject to Violence*. Page 21.

approach when dealing with victims of DV in Bosnia as well as incorporate more actors to be involved.

Secondly, Article 25 of the IC covers the revictimization of survivors of DV.<sup>131</sup> The biggest cleavage in the Bosnian system regarding protecting victims and survivors of DV is the states' failure to prevent revictimization or 'secondary victimization' as stated in the IC. This section will lightly highlight where BiH fails in the IC from Chapters III, IV, and V. Revictimization occurs at any given part of the process for those who are trying to achieve justice for DV in Bosnia. This issue is so major that for many NGOs they do not encourage their clients to seek justice because they know much they will be fraught with conflicts and issues.<sup>132</sup> Some NGOs do not push for victims and survivors of DV to move forward with reporting, filing a case or even trying to achieve compensation to their clients. This is because NGOs and other actors do not feel it is ethical for them to push for these measures since they understand the realities that lie ahead for their clients.<sup>133</sup> There is a lack of reporting and a lack of resources for victims of DV in Bosnia.<sup>134</sup> The lack of reporting in BiH also ties into the issues of monitoring claims and how they are not secured, which will be touched on later in this chapter.<sup>135</sup>

To further examine how Articles from the IC are being infringed upon in Bosnia, it first must not be overlooked how fragmented the system is in Bosnia and due to this lack of harmony victims and survivors of DV seem to slip through the cracks of the safeguards that should be

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<sup>131</sup> Article 25 of the Istanbul Convention | Addressing Re-Victimization of Survivors of Domestic Violence.

<sup>132</sup> United Nations Women – Europe and Central Asia. (2019). Analysis of the Cost of Domestic Violence: Estimating the Cost of Multi-sectoral Response at the Local Level in Bosnia and Herzegovina. Assessment. United Nations Entity for Gender Equality and the Empowerment of Women (UN Women). Page 42.

<sup>133</sup> UN Women. (2022). Interview.

<sup>134</sup> Kovač, Rijad & Hrnčić, Zlatan & Pilav, Aida & Poturković, Mirsada & Memić, Fahrudin & Avdukić, Nijaz & Balavac, Merima. (2018). *Impact Evaluation of Mandatory Protection Measures on Domestic Violence*. Evaluation Society in Bosnia and Herzegovina.

<sup>135</sup> The United Nations Human Rights Council. (2017). Report of the Working Group on the Universal Periodic Review – Bosnia and Herzegovina. [A/HRC/28/17](#). Pages 4-6.

already set in place.<sup>136</sup> An example of this stems from Article 25 of the IC which protects *support for victims of sexual violence*, this failure to protect can be seen through the process a victim of DV must go through when ‘collecting evidence’ that she has experience DV more specifically in the situation when the victim has been raped.<sup>137</sup>

To begin, there are no rape centers in Bosnia, a woman must first find a proper medical clinic or hospital and request a rape kit to be ordered and processed by the Court so that this kit can be used as evidence later if the victim wishes to press charges.<sup>138</sup> What is important to note is that if the victim does not get this rape kit court ordered, then it will not hold up in a court of law as a means of evidence, even if it is the same type of kit and medical procedures still follow the exact same procedure.<sup>139</sup> The reality of this situation can be pictured through a victim having to stay in their garments that they were raped in and even before arriving to the hospital or clinic they must find a medical center that will first admit them in a timely manner.<sup>140</sup> To put this situation into perspective this, process a victim must go through to secure their own evidence begins with accessibility and not all survivors of DV, especially for this example of DV in the form of rape, have access to cars, public transportation and a nearby clinic/hospital.<sup>141</sup> Moreover, regarding revictimization of survivors, it should be taken into consideration that victims of DV experience a range of emotions and feelings after experiencing violence committed against them and having to wait and collect evidence might be the last thing they want to do in that moment.

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<sup>136</sup> Kovač. (2018). *Impact Evaluation of Mandatory Protection Measures on Domestic Violence*. Evaluation Society in Bosnia and Herzegovina.

<sup>137</sup> United Nations Women – Europe and Central Asia. (2019). *Analysis of the Cost of Domestic Violence: Estimating the Cost of Multi-sectoral Response at the Local Level in Bosnia and Herzegovina*. Assessment. United Nations Entity for Gender Equality and the Empowerment of Women (UN Women). Page 58.

<sup>138</sup> Ibid.

<sup>139</sup> Sarajevo Open Centre. (2022). Interview.

<sup>140</sup> Ibid.

<sup>141</sup> Ibid.

Readers should understand the frustrations that survivors are met with instantly after having this type of incident occurs. This note is important because survivors of DV that want to report and seek justice are met with complications from the start of the process until the end, beginning with reporting to state authorities, to then securing evidence, combating social stigmas, securing proper legal counsel, the court proceedings, the judgement itself and finishing with receiving adequate compensation for their case. All this weighs heavily on victims and survivors and BiH has not taken enough proper measures to combat and prevent revictimization from occurring in their system.<sup>142</sup> From my research I found that it should be noted that regardless of a court ordered rape kit, all rape kits should be able to be upheld in courts as evidence in Bosnia.<sup>143</sup> These tiers of revictimization constantly add trauma to victims and survivors of DV in BiH. These layers add up and hurt every individual who tries to receive adequate justice in the state.

A portion of this claim of state failure to protect victims and survivors of DV stems from Article 18 of the Istanbul Convention highlighting section 3 which, "... requires all parties to take necessary legislative or other measures to protect all the victims from any further acts of violence which also emphasizes that there is a better understanding of domestic violence in the first place with regards to all forms of state authorities".<sup>144</sup> The Bosnian judicial system is very interesting when it comes to delivering justice based on DV cases. Reports show that many victims of DV would rather take plea deals and settle outside of court so that they can still get their compliance delivered.<sup>145</sup>

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<sup>142</sup> UN Women. (2022). *Perceptions of violence against women and girls*. Comparative Summary. Pages 1-22.

<sup>143</sup> Freedom of Democracy Legal Advocacy Agency. (2022). Interview.

<sup>144</sup> Istanbul Convention Article 18 Section 3.

<sup>145</sup> Halilović, Majda. (2015). *Survivors Speak: Reflections on Criminal Justice System Responses to Domestic Violence in Bosnia and Herzegovina*. The Geneva Centre for Democratic Control of Armed Forces (DCAF) and Atlantic Initiative. Pages 73-89.

### 3.2.1 Understanding the Current Circumstances to Survivors of Domestic Violence in Bosnia, Criminal Sentencing Under Chapter V of the IC

Article 45 of the Istanbul Convention highlights the major problem that BiH is facing when it comes to protecting survivors of DV.<sup>146</sup> When it comes to criminal sentences what has been strikingly found through research is that many perpetrators of violence against women, specifically DV, receive mitigated sentences.<sup>147</sup> A common theme that has been found throughout these sentences has been that judges use the ‘family man’ complex that allows for men to get away with violence against women.<sup>148</sup> This complex stems back to the patriarchal and heteronormative societal views in Bosnia as stated in Chapter 2. This complex is linked to the perpetrator, and he is seen as the man of the household and without him being in the family lifestyle, the entire system collapses, which has been proven to not be true through external research but is the notion used in a variety of DV court cases.<sup>149</sup>

After interviewing researchers and legal advocates from the Sarajevo Open Center, the Freedom of Democracy Legal Advocacy in Sarajevo and UN Women, the most common lowest or suspended sentences for perpetrators of DV average between six to eight months in jail and most are mitigated to be even less than this.<sup>150</sup> The lowest suspended sentences are often drawn back to a refusal of testimony, when this occurs in a court case in Bosnia when dealing with DV the judiciary does not move forward with reviewing the evidence that has been provided and

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<sup>146</sup> Article 45 of the Istanbul Convention covers Sanctions and Measures.

<sup>147</sup> UN Women. (2022). Interview.

<sup>148</sup> Halilović, Majda. (2015). *Survivors Speak: Reflections on Criminal Justice System Responses to Domestic Violence in Bosnia and Herzegovina*. The Geneva Centre for Democratic Control of Armed Forces (DCAF) and Atlantic Initiative. Pages 100-106.

<sup>149</sup> Ibid.

<sup>150</sup> Interviews. (2022). Sarajevo Open Center. Freedom of Democracy Legal Advocacy Agency. UN Women.

further expands rights to the perpetrating party rather than to the victim themselves, this allows for the victims to not be properly protected in the Bosnian system.<sup>151</sup>

### 3.2.2 The Right to Compensation Covered by Article 30 of the Istanbul Convention

Bosnia has issues upholding Article 30 of the IC, which states “ [p]arties shall take the necessary legislative or other measures to ensure that victims have the right to claim compensation from perpetrators for any of the offences established in accordance with this Convention. Adequate State compensation shall be awarded to those who have sustained serious bodily injury or impairment of health, to the extent that the damage is not covered by other sources such as the perpetrator, insurance or State-funded health and social provisions.”<sup>152</sup> The reality of compensation delivered to victims of DV in Bosnia are near non-existent.<sup>153</sup> What occurs instead of compensation being paid to victims is that court cases end in either plea agreements, settling out of court, issues with verifying that the victim can indeed claim compensation for their case, and few of the enforcement mechanisms in the past have resulted in a positive result for the few brave survivors of DV in Bosnia that take their case to court.<sup>154</sup> Since 2015 only 16 verdicts have been delivered on the topic of DV in Bosnia while, “[t]he results of the OSCE Survey on Well Being and Safety of Women in BiH showed that almost one in two women survived some form of abuse including intimate partner violence since the age of

<sup>151</sup> DCAF; Geneva Centre for Security Sector Governance. (2017). *Prosecutors’ Domestic Violence Handbook for Bosnia and Herzegovina*. Atlantic Initiative.

<sup>152</sup> The Council of Europe. (2014). The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. Article 30 Paragraph 1-2, Page 16.

<sup>153</sup> Jovanović Belotić, Sandra. (2022). *Perpetrator Programmes in the Western Balkans: Mapping the Existing Practices and Ways Forward*. Research Paper. UN Women.

<sup>154</sup> DCAF; Geneva Centre for Security Sector Governance. (2017). *Prosecutors’ Domestic Violence Handbook for Bosnia and Herzegovina*. Atlantic Initiative.



15” but regardless of these statistics, justice is rarely fully served for survivors of DV in Bosnia.<sup>155</sup>

While prosecution rates for women who have faced DV in Bosnia have lightly increased over the past several years, the driving link to this is largely due to international efforts to support BiH in their justice sector, many of these cases still result in disappointing sentences and sanctions against perpetrators of VAW.<sup>156</sup> The disappointing sanctions can be directly correlated to the fragmentation of the implementation of laws at the entity levels in Bosnia. Statutory minimums become further diverse amongst entity levels and many of these cases result in plea bargaining instead of proper criminal sentences.<sup>157</sup> This practice is problematic, though, because perpetrators that are ordered to compensate their victims are usually only sentenced to just under one year in prison, which typically is converted to a form of payment of a fine instead of serving jail time and in many cases this fine that is paid does not fully benefit the victim.<sup>158</sup> The OSCE found that some politicians have tried to create such a system to help with reparations statewide for survivors, but they have, “... repeatedly failed due to funding issues and disputes over which side should bear responsibility ... Troublingly, each option is riddled with many obstacles.”<sup>159</sup> This cannot be emphasized enough that there are major issues in Bosnia regarding their follow

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<sup>155</sup> Organization for Security and Co-Operation in Europe (OSCE). (2020). *OSCE on domestic violence in Bosnia and Herzegovina in time of COVID-19*. Gender Equality Report.

<sup>156</sup> Amnesty International. (2018). *Last Chance for Justice for Bosnia’s Wartime Rape Survivors*. Amnesty International. Pages 11-26.

<sup>157</sup> Delbyck, Kyle. (2018). *Integrated Policies – Integrated Approach: Mapping of Policies and Legislation on Violence Against Women and the Istanbul Convention in the Western Balkans and Turkey – Executive Summary*. The European Women’s Lobby. Page 16.

<sup>158</sup> Organization for Security and Co-operation in Europe. (2017). *Towards Justice for Survivors of Sexual Violence in Bosnia and Herzegovina: Progress before Courts in BiH 2014–2016*. Report. Pages 72-78.

<sup>159</sup> Delbyck, Kyle. (2018). *Integrated Policies – Integrated Approach: Mapping of Policies and Legislation on Violence Against Women and the Istanbul Convention in the Western Balkans and Turkey – Executive Summary*. The European Women’s Lobby. Page 16.

through on laws, implementation strategies and even ensuring follow through on compensation being delivered to victims of DV despite it being laid down in law.

Another issue for survivors of DV lies in the fact that criminal courts try to re-direct survivors to engage in civil proceedings rather than criminal proceedings, and in this occasion, survivors are forced to pay additional costs, testify on multiple occasions, and most notably they relinquish their guarantee of having their identity protected.<sup>160</sup> What is important to note here, though, is that many women do not ever make it to this stage, as civil courts are unjustifiably applying statutes of limitations to dismiss their claims. Lastly on this matter, research from the European Women's Lobby found that there has been zero data on compensation claims filed by victims and delivered by courts, the lack of data on these success rates in courts are predominately not sought after nor are they collected by authorities.<sup>161</sup> This is widely known in Bosnia and is another driving factor as to why survivors of DV do not seek justice.

### 3.3 Field Research Emphasis and Conclusion

Throughout my field research in Bosnia, it was very apparent that there needs to be an added emphasis on safety networks in the country. This would allow for everyone on all sides of every entity to have more of a level playing field, as well as having harmony over policies and equality. When it comes to policy change, it seems as though it is very stagnant and very disillusioned. Some locals in Sarajevo communicated to me about how their opinions do not

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<sup>160</sup> Organization for Security and Co-operation in Europe. (2017). *Towards Justice for Survivors of Sexual Violence in Bosnia and Herzegovina: Progress before Courts in BiH 2014–2016*. Report. Pages 72-78.

<sup>161</sup> Delbyck, Kyle. (2018). *Integrated Policies – Integrated Approach: Mapping of Policies and Legislation on Violence Against Women and the Istanbul Convention in the Western Balkans and Turkey – Executive Summary*. The European Women's Lobby. Page 17.

matter as much when trying to create policy change, as there is more of an emphasis on having money behind any type of policy change.

Another issue in Bosnia is that it is almost impossible to track cases all the way through from beginning to end for victims of DV. This cleavage in their system is very important to highlight that this also connects and correlates to the multi sectoral approach that is being used in Bosnia. Due to the lack of harmonious laws between the entities and the cantonal levels, there seems to be a breach of enforcement. While BiH fails to deliver on many levels of protecting victims and survivors of DV, there is still an underlying tone of hope and the want for change in the Bosnian system. This change is echoed due to the pressure Bosnia puts itself under for wanting to join the EU. Stemming from this theme there is a lot that still needs to change to help those who have been affected by DV in BiH, and some of the first steps are implementing the recommendations that international institutions such as GREVIO and CEDAW have delivered to Bosnia.

## Chapter 4 | Recommendations and Moving Forward

One of the biggest issues with responding to VAW and DV in Bosnia all correlates back to legislation being regulated at the entity and lower levels of their government.<sup>162</sup> “The law on protection from domestic violence in Republica Srpska specifically prohibits violence against women and provides for measures of protection and minor offense sanctions, whereas the Criminal Code of Republica Srpska stipulates that DV is a criminal offense.”<sup>163</sup> The reality of this situation is that due to heavy fragmentation and a lack of harmony amongst implementation of laws on the lower levels of governments, Bosnia requires a multitude of recommendations to try and achieve proper protection for their victims and survivors of DV.

Firstly, Bosnia must take adequate measures to implement a law that sets out proper procedures for providing free legal aid to all survivors of violence without the basis of criteria on all levels of its governments. It should be defined in this law that every woman is entitled to this right under their jurisdiction.<sup>164</sup> Next, Bosnia needs to provide proper funding for these programs and set out procedures for if the budget plans fail then the government must request assistance from international institutions such as the IMF, the EU, and other international donors to help fill the gap. This procedure will ensure the proper implementation of safety regulations that are required by law for the state to provide. These recommendations all support the CEDAW General Recommendation No. 33 with regards to ensuring, “... all legal systems, including plural legal systems, protect victims/survivors of gender-based violence against women and ensure they

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<sup>162</sup> Hadzimesic, Lejla. (2019). *Review of the Multi-sector Approach to Domestic Violence at the Local Level in Bosnia and Herzegovina*. United Nations Entity for Gender Equality and the Empowerment of Women (UN Women). Page 16.

<sup>163</sup> Hadzimesic, Lejla. (2019). *Review of the Multi-sector Approach to Domestic Violence at the Local Level in Bosnia and Herzegovina*. United Nations Entity for Gender Equality and the Empowerment of Women (UN Women). Page 16.

<sup>164</sup> Law on Gender Equality BiH: Due to this law the terminology used in Bosnia is gender blind and essentially leaves women out. Therefore, it is imperative that the term 'Woman' be used in the drafting of this law.

have access to justice and to an effective remedy.”<sup>165</sup> Following this, it is imperative that these centers are not only provided with sufficient funding but also enough staff so that the legal support victims receive is thorough and done in a timely manner. This chapter will highlight new approaches to handling DV and pose recommendations on how to change the Bosnian system to better accommodate victims and survivors of DV.

#### 4.1 The Duluth Model

Bosnia needs to transform their approach when handling survivors, instead, they should take a victim centered approach, so that during the process of accessing justice the survivors are not revictimized. To ensure this, Bosnia should look to the *Duluth Model* and take on a community approach. The Secretary General on Sexual Violence in Conflict stated that they, “... encouraged states such as Bosnia and Herzegovina to take a victim or survivor-focused approach with ‘tailored solutions that build resilience, restore voice and choice to survivors and address the diverse experiences of all affected individuals.’”<sup>166</sup>

The Duluth Domestic Abuse Intervention Project has hypothesized that the main cause of DV is a, “... socio-cultural, patriarchal ideology that has throughout history allowed men to control women through power and violence.”<sup>167</sup> One of the biggest issues in Bosnia is that victims do not stay safe, and perpetrators are not held accountable for their actions. A perfect remedy to this is the Duluth Model since it is based on involving the community to work together to help end DV through acknowledging and challenging the male perception that they

<sup>165</sup> The United Nations Committee on the Elimination of Discrimination Against Women (CEDAW). (2018). *Sixth periodic report submitted by Bosnia and Herzegovina under article 18 of the Convention, due in 2017*.

<sup>166</sup> Onuchukwu, Michaela. (2020). *BiH Fails to Support Survivors of Conflict-Related Sexual Violence*, Human Rights Pulse. Page 5.

<sup>167</sup> *The Duluth Model of Community Coordination*.

are entitled to control, coerce, and dominate their partners.<sup>168</sup> This model shifts the responsibility of safety from the victim/survivor to the community and state. This shift engages the community, which in theory would only strengthen the entire population of Bosnia. This psychoeducational approach invites and utilizes the voices and experiences of women when drafting policies and procedures, which is often left out in Bosnian politics, thus allowing for more open dialogue between women and the community.<sup>169</sup> This technique helps grasp the underlying problems victims experience by their offenders and helps educate the community by broadening their understanding. The Duluth Model Approach evolves into a, “*Coordinated Community Response*: which centralizes the victims' safety and holds the offender accountable whilst coordinating with an interagency on intervention strategies.”<sup>170</sup> The goal of this approach is to persuade and normalize to men that nonviolent strategies, such as respect and non-threatening behavior, cements a foundation for well-built and egalitarian relationships.<sup>171</sup>

#### 4.2 Amendments to the Constitution

Regarding the ECtHR cases, it seems necessary at this point that Bosnia makes some major adjustments to their constitution. One of the first amendments to their constitution should reflect upon the notion of non-discrimination. To further this point, Bosnia must *fully* implement laws that concretely and actively address women in their legislation in Bosnia. Lastly, there needs to be an emphasis on having higher quotas for women to be included in all aspects of political and social life in Bosnia as well. These recommendations would set in motion more drastic measures to reach gender-equality in the country and help those affected by DV.

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<sup>168</sup> Ibid.

<sup>169</sup> Ibid.

<sup>170</sup> National Institute of Justice | Crime Solutions. (2013). *Practice Profile: Interventions for Domestic Violence Offenders: Duluth Model, 2013*. United States Government.

<sup>171</sup> Ibid.

### 4.3 Revamp the Multi-Sectoral Approach to Handling Domestic Violence in BiH

When it comes to Bosnia's multi-sectoral approach to handling DV in Bosnia the entire system is fraught with issues, from a lack of cohesion regarding data collection and reporting to efforts aimed at destigmatizing DV in Bosnia. From my research I have concluded that there needs to be an overhaul of the system itself and the new revised approach to handling DV in Bosnia which should include as stated before regarding the Duluth Model, taking a victim-centered approach which would include the entire community in Bosnia to help tackle the issue of VAW in Bosnia, more specifically DV.

The multi-sectoral approach to handling DV should include a well-established system of data collection agencies that are tied to the DV centers in the cantons in Bosnia and further establish a form of data sharing to help foster sustainable solutions to combatting DV in Bosnia. Regarding protection against secondhand victimization or revictimization in Bosnia, by approaching this reform with a victim-centered-approach it would be best to promote education on VAW in Bosnia starting in campaigns in schools, which would dually help address and end stigmatizing women who have experienced DV or have experienced VAW in Bosnia.<sup>172</sup> This approach would help authorities as well by ending the stigma and bias that officials hold against women and these educational campaigns would prove to be helpful if implemented properly in trainings as well for government authorities such as police forces as well as for medical professionals and even local staff at jobs across the country in Bosnia.<sup>173</sup> These recommendations cannot stress enough that for the multi-sectoral approach to function properly

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<sup>172</sup> UN Women Regional Office for Europe and Central Asia and UNFPA Regional Office for Europe and Central Asia. (2022). *Baseline study on gender norms and stereotypes in the countries of the Eastern Partnership*. Case Study.

<sup>173</sup> Muftić, L. R., & Cruze, J. R. (2014). The laws have changed, but what about the police? Policing domestic violence in Bosnia and Herzegovina. *Violence against women*, 20(6), Pages 695-715.

they need to involve women at every step of the process since this system is in place to protect them.

#### 4.4 Conclusion

While Bosnia still has a bit to go to fully implement their laws to all parts of the governments and to their people, it is important to understand the extensive barriers that are currently in place for victims/survivors that are trying to access justice in Bosnia. By understanding that Bosnia does not take a victim centered approach, this study established that the government lacks funds to properly run centers for free legal aid for women who have experienced DV and lacks proper implementation strategies for all levels of their government due to the patriarchal influence in Bosnia which leaves women out of making major political decisions for the country. All of this has in turn left women to fend for themselves when it comes to trying to access justice. Furthermore, evidence from the reports gathered from International Organizations, CSOs and NGOs in Bosnia seem to point out that Bosnia is hoping to change their approaches so that they can, in turn, fully implement the IC. This would mean more accountability on the states end though, but once, "... states have accepted their obligations to protect certain forms of human rights, if activists can convince publics and policymakers that women's rights are human rights, then they can make the case that states also have obligations to protect women from violence."<sup>174</sup>

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<sup>174</sup> M. Keck and K. Sikkink (1998). *Transnational networks on violence against women*. In *Activists Beyond Borders*. Cornell University Press. Page 196.



## Conclusion

I have argued throughout this thesis that Bosnia is failing on its obligations to fully protect victims and survivors of DV due to their complex internal structure of government that deals with fragmentation on many levels, so much so, that laws are not harmonious across the entities, this correlates to victims and survivors of DV slipping through the cracks of the Bosnian regime. Additionally, victims and survivors of DV in BiH find themselves stuck between a plethora of barriers that hold them back from trying to achieve justice. The beginnings of the process to achieve justice for women who have experienced DV in Bosnia is fraught with stigmas, unimplemented safeguarding laws and DV sectors that simply do not run properly from the state. Achieving justice for women who have experienced DV in Bosnia is so rare due to the broken and fragmented process itself and how it is riddled with obstacles that constantly pose high-risk threats of revictimizing survivors of DV along the way. This process lacks positive data on simply cases that are completely followed through from survivors reporting to their perpetrators being sentenced that the absence of positive success rates for women who have experienced DV holds most victims back from starting the process to begin with.

The biggest takeaways from my work should be remembered as Bosnia possessing a broken fragmented system that is disproportionally and discriminatory towards women plus the system lacks a foundation that incorporates women into their laws and society. This work is relevant because there needs to be more knowledge and awareness out there about how a European country such as Bosnia, who is a part of the ECtHR and has signed a multitude of European and International conventions and treaties, is still failing miserably at delivering on their state obligations. Just because a country is complex does not give grounds to a lack of

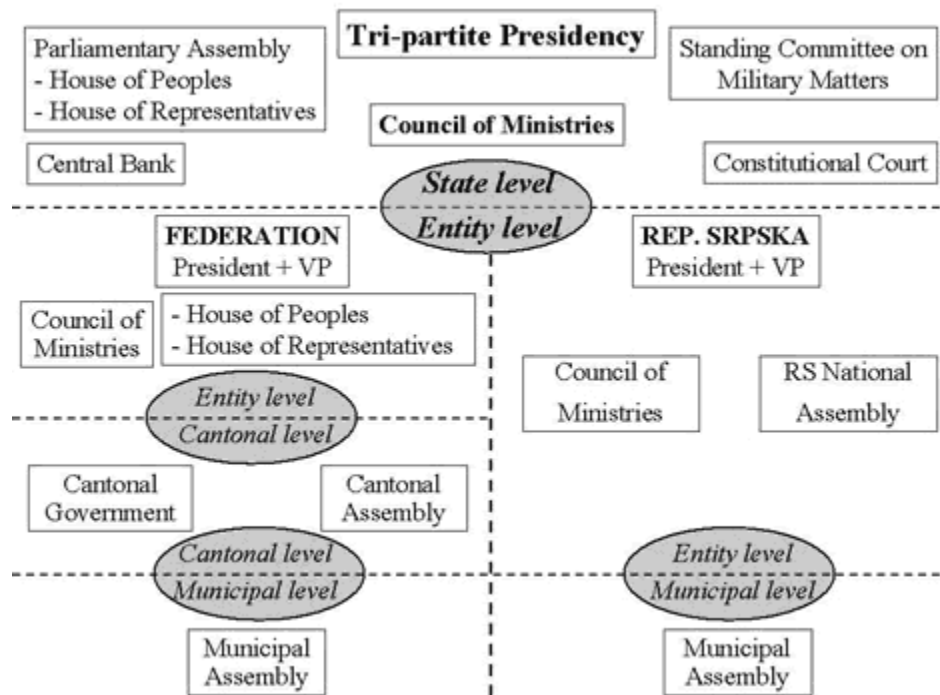
attention and research on the subject. The take home message is that women's rights are human rights. This issue needs to be more properly addressed, researched and supported in Bosnia.

## Appendices

### Appendix A

Figure 1.1

Government Map of Bosnia and Herzegovina



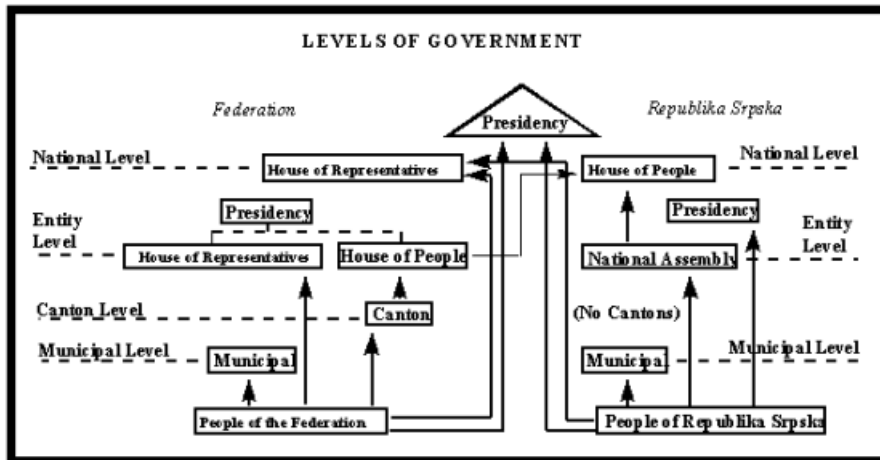
Note. This image shows the complex makeup of the Tri-partite Presidency System that is in place in Bosnia and Herzegovina. Reprinted from NATO, image by Thierry Domin, first published 31 October 2001. Political System of Bosnia and Herzegovina.

<https://www.nato.int/sfor/indexinf/125/p03a/t0103a.htm>

## Appendix B

Figure 1.2

### Levels of Government in Bosnia and Herzegovina



Note. This image shows the complex makeup of the Bosnian government and further provides insight as to how government bodies interact with one another. Reprinted from International Foundation for Electoral Systems, first published 4 October 2018. Levels of Government of Bosnia and Herzegovina. <https://www.ifes.org/faqs/elections-bosnia-and-herzegovina-2018-general-elections>

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