



Perspectives Series: Research Report

**WAR VICTIMS AND GENDER-SENSITIVE
TRUTH, JUSTICE, REPARATIONS AND
NON-RECURRENCE IN BOSNIA AND
HERZEGOVINA**

Maja Šoštarić

Cover photo: Rick Nederstigt



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Acknowledgements

When Impunity Watch commenced its project on gender-sensitivity and the processes of truth, justice, reparations and non-recurrence in Bosnia and Herzegovina in October 2011, the principal challenge during the research phase consisted in reaching out to the key stakeholders involved in the processes. It was not an easy task, given the diversity of these stakeholders, as well as their various means of involvement in the vast field of transitional justice, women's rights and peace building.

In this sense, the partnership with local civil society organizations proved essential. The local network of over 100 NGOs, Network for Building Peace, is jointly coordinated by the Catholic Relief Services (CRS) and Caritas BC BiH. Two representatives of these organizations, Goran Bubalo (CRS) and Suzana Božić (Caritas), were the most valuable colleagues to have on board. The project their two organizations are currently carrying out, "Choosing Peace Together", is focused on war survivors, male and female, from different parts of BiH and with very different personal stories. Suzana and Goran's excellent contacts and permanent readiness to assist Impunity Watch in its project, alongside their own very packed schedules, contributed to the overall understanding of the post-conflict gender-oriented transitional justice, which is pivotal for this report. It was only through cooperation with these two generous people that a number of war survivors and local civil society organizations was approached, contacted and interviewed. Moreover, it was with their assistance that the civil society consultation and the final policy multi-stakeholder meeting were organized.

In this sense, the contribution of several camp detainees' associations (Association of Camp Detainees of BiH, Association of the Croat Camp Detainees of the Homeland War, Association of Camp Detainees of RS), women's organizations and victims' associations (Medica Zenica, Snaga žene Tuzla, Viva žene Tuzla, Woman Victim of War, Sumejja Gerc) as well as the associations of families of the missing persons (notably from Vogošća, Eastern Sarajevo and Grabovica – Mostar) is worth mentioning. They actively participated in the research phase, but also in the civil society consultation and the final policy meeting. Their experiences illustrate a number of points that this report is trying to make.

Moreover, at this point, a valuable contribution of the Court BiH, notably Judge Minka Kreho on the one hand, and the Witness Support Office on the other, should be underlined. Without their input, much of statistical data presented in this report would have been missing. Also, we should thank the Ministry for Human Rights and Refugees of BiH, which provided Impunity Watch with important information on some of the ongoing initiatives, and whose representative also participated in the final meeting. Balkan Investigative Reporting Network, BIRN, was the principal media partner. Finally, several international organizations, such as the ICTY Outreach Office, ICMP, OSCE or UNDP, were very supportive during the research-process and delivered constructive comments on the final draft recommendations.

Maja Šoštarić

This report was researched and written by Maja Šoštarić under the guidance of Impunity Watch. A final edit of the report was overseen by Impunity Watch Gender Coordinator Karlijn Leentvaar and Gender Project Officer Karen Hammink.

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Abbreviations

ARBiH (Army of Bosnia and Herzegovina)

BiH (Bosnia and Herzegovina)

BIRN (Balkan Investigative Reporting Network)

CAT (United Nations Committee Against Torture)

CEDAW (United Nations Committee for Elimination of Discrimination Against Women)

CEN (Central Records of the Missing Persons)

CRPC (Commission for the Real Property Claims of the Displaced Persons)

CSO (Civil Society Organization)

DPA (Dayton Peace Agreement)

ECHR (European Convention on Human Rights)

ECtHR (European Court for Human Rights)

EU (European Union)

EUFOR (European Union Force)

EUPM (European Union Police Mission)

EUSR (European Union Special Representative)

EWG (Expert Working Group)

FBiH (Federation of Bosnia and Herzegovina)

FMP (Fund for the Missing Persons)

FIGAP (Financial Instrument for the implementation of the Gender Action Plan)

GAP (Gender Action Plan)

HR (High Representative)

HRC (United Nations Human Rights Committee)

HVO (Croatian Defence Council)

ICTY (International Criminal Tribunal for the former Yugoslavia)

IDP (Internally Displaced Person)

IPTF (International Police Task Force)

IW (Impunity Watch)

LMP (Law on the Missing Persons)

JNA (Yugoslav National Army)

MHRR (Ministry for Human Rights and Refugees)

NATO (North Atlantic Treaty Organization)

NGO (Non Governmental Organization)

NSWCP (National Strategy for War Crimes Processing)

OHR (Office of the High Representative)

OSCE (Organization for Security and Cooperation in Europe)

PTSD (Post-Traumatic Stress Disorder)

RDC (Research and Documentation Centre)

REKOM (Coalition for RECOM)

RS (Republika Srpska)

SAA (Stabilization and Association Agreement)

SIPA (State Investigation and Protection Agency)

TJRNR (Truth, Justice, Reparations and Non-Recurrence)

TJS (Transitional Justice Strategy)

UN (United Nations)

UNDP (United Nations Development Program)

UNFPA (United Nations Population Fund)

UNHCR (United Nations High Commissioner for Refugees)

UNSCR (United Nations Security Council Resolution)

US (United States)

USIP (United States Institute for Peace)

WCC (War Crimes Chamber)

WGEID (United Nations Working Group for Enforced and Involuntary Disappearances)

EXECUTIVE SUMMARY & MAIN RECOMMENDATIONS

War survivors all want to know the truth about the conflict era, that justice be done, that the harm they suffered is recognised and that they can rebuild their lives in peace. However, when considering the gender of those who suffered from conflict it becomes apparent that the needs of men and women in Bosnia and Herzegovina (BiH) with respect to these processes of truth, justice, reparation and non-recurrence (TJRNR) are different. While the international judicial and policy-framework on gender-sensitive TJRNR had advanced in the past decades, and there is increased attention for gendered differences on the national level in BiH as well, these efforts still fail to address gendered needs effectively and in an integral manner throughout all TJRNR efforts. It is in the concrete implementation of TJRNR-processes that the main obstacles are found.

Practically speaking, it is more difficult for women to have access to, participate in and benefit from processes of TJRNR, since these do not take the needs of women into consideration in either their design or implementation. As some of the examples quoted in this report reveal, a female IDP claiming property will often encounter prejudices and a lack of understanding within society, something a male IDP will likely not experience. Women looking for their missing husbands are not entitled to a number of benefits from the Law on Missing Persons. Victims of war time sexual violence, mostly women, face major challenges in obtaining their right to war-related compensation. In short, there is a clear need to integrate a gender-sensitive approach to processes of TJRNR, including both female and male victims, in order to understand and transform the broader social context of trauma and post-conflict experiences and post conflict development challenges.

An analysis of the gender-sensitivity of several key BiH laws, strategies and documents in the area of TJRNR shows the following. Since 2008, the country has had a National Strategy for War Crimes Processing (NSWCP), the objective of which is to process all outstanding war crimes within the next fifteen years, aiming to finalise this work in 2023. Concentrating on war crimes trials, the NSWCP focuses only on the criminal justice. Unlike the NSWCP, the newly drafted but not yet adopted Transitional Justice Strategy (TJS) aims to target all the remaining pillars of TJRNR: truth seeking, reparations and institutional reforms. Since 2004 BiH has had the state-level Law on Missing Persons (LMP), which foresees a Central Records of the Missing Persons (CEN) as well as the Fund for the Missing Persons (FMP), none of which has materialized so far. While the NSWCP and LMP are not considered gender-sensitive, there is evidence of an attempt to be gender-sensitive in the design of the first public draft of the TJS. Several points are identified in this report in which the TJS should be further improved in order to enhance the gender-sensitivity of TJRNR processes.

In the area of reparations, several initiatives are to be mentioned. Currently, the Ministry for Human Rights and Refugees of BiH (MHRR) is steering the process of drafting a document entitled Program of Assistance to Women Victims of War Rape, Sexual Violence and Torture 2013-2016, and despite its name, there are indications that this document will also include male victims of war sexual violence. Also, a number of camp inmates associations, together with a women's organisation called Vive Žene Tuzla, is currently working on a state-level draft Law on Rights of Victims of Torture and Civilian Victims of War, given that there is no national law so far acknowledging the victimhood of the former camp detainees. When it comes to returnees, the Council of Ministers adopted in 2010 the Revised Strategy for Implementation of Annex VII of Dayton Peace Agreement (DPA). Whereas the DPA is not particularly gender-oriented, the abovementioned Program and draft law are expected to include a gender-sensitive approach.

In attempts to establish truth-seeking mechanisms in BiH, women and their experiences of conflict have so far been vastly underrepresented. BiH has seen two failed attempts of establishing a national truth commission, as well as several rather unsuccessful local initiatives. None of these initiatives have involved women in a serious and meaningful manner. Two regional NGO-led initiatives currently being advocated for are RECOM and Court of Women for the former Yugoslavia. While gender-sensitivity of RECOM remains to be seen, Court of Women is intended to be dedicated entirely to women's public testimonies leaving out men's experiences of and viewpoints on the conflict.

BiH courts use several criminal codes that allow for discrepancies in sentencing: this is why victims of torture, often men, and of war time sexual violence, often women, are left with the sentiment that justice had not been satisfied. Families of missing persons, mostly women, have filed a number of lawsuits against BiH before the country's Constitutional Court. They express disappointment because the decisions of the Court in their favour have never been enforced by the state. Also, men testify much more often than women, except when they were victims of war time sexual violence. Many women who could offer valuable insights into the events of 1992-1995 never set foot in courts because they feel threatened, intimidated or afraid for the lives of their families.

Currently, there is no system in place for reparations. There are modest pensions that are paid on the basis of disability and income (the latter applies for victims' family members), and not as reparation for a human right that has been violated. Therefore, these do not qualify as reparations. Moreover, the national/entity legislation either does not recognize an entire category of war victims, as is the case of former camp inmates or recognizes them in just one of the entities, as is the case for victims of war sexual violence. The families of the missing persons are recognized as a category of persons entitled for reparation, but the legislation providing for this has never been implemented in practice. In the case of displaced persons, a reparative measure that has been implemented is the returning of property, but this has not been accompanied by measures that guarantee sustainable return. Women are particularly vulnerable in the context of all named categories, which is not or insufficiently reflected in the existing reparative measures, since besides the non-existent or very modest entitlements they receive and the stigma attached when they claim these properties, they are not prioritized in healthcare, social protection, employment or education. Women living in remote rural areas are especially affected by this situation. In spite of this situation, women are particularly active in civil society, be it in NGOs dealing with therapy, rehabilitation, education, labour market reinsertion, assistance and legal aid to victims. In that sense, several organisations that may serve as role models for others are cited in this report.

The Ministry of Justice is currently drafting a law on vetting and lustration, which has yet to be adopted. Several similar initiatives have already failed in the past. Women are underrepresented in the security sector institutions of BiH, be it the police or the armed forces. This is also the case in politics, where men outnumber women. By contrast, in the judiciary, women outnumber men, but only in lower-level positions at courts and prosecutor's offices. Gender-based violence (GBV) remains a burning issue even today, as it increased in the aftermath of the conflict. This represents a direct legacy of the war period.

In accordance with the UN Security Council Resolutions 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009) and 1960 (2010), BiH has an institutional setting for gender mainstreaming. It has a Gender Equality Agency as well as two gender centres for both entities that the BiH consists of (Federation of Bosnia and Herzegovina and the Republica Srpska; Brčko District does not have a gender-centre), and it was the first country in

the former Yugoslavia to have adopted a National Action Plan for Implementation of UNSCR 1325. Such commendable steps can only encourage the representatives of these institutions to incorporate gender even more into TJRNR processes. Since the general public does not perceive state institutions as influential enough to change the dominant understandings of the conflict and implement adequate policies in the areas of truth, justice, reparations and non-recurrence, the active involvement of the CSOs and media is particularly called for in order to speed up these processes.

MAIN RECOMMENDATIONS

Our research and subsequent policy-consultations, in which a variety of relevant stakeholders participated, led to a series of recommendations, which are both urgent and feasible. An extensive list of recommendations to improve current, and more urgently future TJRNR mechanisms at different levels in society can be found in chapter 7. Since much has been said by various actors on how to improve and promote gender-sensitive TJRNR processes, some of our recommendations are not new, but reconfirm existing recommendations. We have included them here to emphasize the need for an integral approach to TJRNR processes and mechanisms, bring about structural institutional reform and enforce victims as rights holders. Although we make separate recommendations for truth, justice, reparations and non-recurrence aspects, we recommend to consider these in an integral manner, since we strongly believe that the effectiveness of these TJRNR processes and mechanisms can be greatly improved by an integral approach.

GENERAL

Council of Ministers & Parliament of Bosnia and Herzegovina (BiH):

- Adopt the Transitional Justice Strategy, for the strategy encompasses the elements of truth seeking, reparations and institutional reforms needed to address the lack of gender sensitive TJRNR efforts and the differing needs of male and female war victims in BiH.

State and entity authorities:

- Assisted by the Gender Equality Agency, the entity gender centers and the Ministry of Justice BiH, offer extensive and comprehensive education on the integration of a gender perspective in TJRNR processes and institutions for all employees working in TJRNR (judiciary, security sector, public administration, social welfare), as well as carry out institutional gender mainstreaming;
- Enhance equal participation of men and women in all Expert Working Groups (EWGs) / supervisory bodies concerning the relevant TJRNR processes and documents by appointing more women and gender experts, and ensure the equal participation of men and women in the EWGs;

Civil society and media:

- Combat gender-based stereotypes that create a ground for gender-based discrimination by fighting the victimization of women within the BiH society and promoting their equal participation in TJRNR processes;

International donor agencies:

- Pay particular attention to the implementation of NAP 1325 in BiH within the processes of TJRNR and support it to the extent possible with relevant technical expertise and financial means.

GENDER-SENSITIVE TRUTH

State-level Ministry of Human Rights and Refugees and Ministry of Justice:

- Given the numerous failed attempts of establishing a truth and reconciliation commission in Bosnia, organize a comprehensive public discussion on what elements of such a commission the country really needs and unlike the previous initiatives, include the local-level victims' associations and civil society in the process, paying attention to the needs and demands of both men and women war survivors. This discussion could take place during the upcoming public campaign on the Transitional Justice Strategy.

Civil society involved in the RECOM process and potential RECOM member states:

- Take into account different attitudes of BiH victims' associations towards RECOM, notably the hesitance coming from many women victims of war time rape, in order to ensure a gender-sensitive fact-finding process and account for massive human rights' violations committed against both men and women of BiH;

GENDER-SENSITIVE JUSTICE

Council of Ministers & Parliament of BiH:

Amend the BiH Criminal Code regarding the following in order to bring it in harmony with international standards:

- Torture: introduce the codification of torture in the criminal codes of the entities and the Brčko District;
- Wartime sexual violence: in Article 173 of the BiH Criminal Code, do not insist on the 'use of force' in order to define sexual violence; do not insist on 'extensive proof of the act of sexual violence by witness testimonies'; establish the obligation to follow Article 198 of the Criminal Procedure Code whereby the victim compensation is ordered by the courts and not directed to the individual civil litigation processes;
- Enforced disappearance: due to the fact that many persons, notably men, have disappeared during isolated attacks and lootings, include the definition of enforced disappearance as an autonomous instance, thereby accounting for the acts of enforced disappearance committed in isolated cases that currently do not fall under the category of a widespread or systematic attack in Article 172 of the BiH Criminal Code;
- Witness protection; amend the Criminal Procedure Code of BiH as well as the Law on Endangered Witnesses of BiH, since both of them allow that the defense be provided with the names of witnesses prior to the trial revealing witnesses' identity and thus threatening their vulnerable position; amend the Law on Witness Protection Program in Bosnia and Herzegovina so it can include adequate witness protection at the entity, cantonal and district level, notably for gender-sensitive crimes such as sexual violence, and include the State Investigation and Protection Agency's (SIPA) services of physical protection for the entity-level investigations of war crimes.

Courts and prosecutors' offices in BiH:

- In accordance with UNSCR 1325 (2000), fight impunity and prosecute those who perpetrated crimes of genocide, crimes against humanity and war crimes including war rape and other forms of sexual violence.
- Accelerate the implementation of the National War Crimes Processing Strategy and ensure the efficient processing of all war crimes trials related to wartime and post conflict cases of gender-based violence.
- Inform victims of sexual violence that, once final verdicts have been established, they can claim individual compensation from the courts.

GENDER-SENSITIVE REPARATIONS

Council of Ministers:

- Harmonize the national reparation scheme according to the different needs of the victims, notably taking into account the existing discrepancy in status-related criteria between civilian victims of war (often women) and the former war veterans (mostly men);
- Adopt, on the state level, the Law on Free Legal Aid, so as to enable adequate legal counseling for all victims of war, men and women, and particularly those who live in rural and remote areas.

GENDER-SENSITIVE NON-RECURRENCE

Council of Ministers:

- Draft, present, adopt, implement and monitor a gender-sensitive state-level vetting, in particular related to the public servants in BiH institutions;
- Consider amending the legal provision regarding the current quota of 30% women elected at both the national and local level, by ensuring that it is respected in the actual appointment of executive and legislative governments, and not only in placing candidates on the lists.

Gender Agency of BiH, entity gender centres, as well as all relevant stakeholders (including civil society):

- Continue supporting the implementation of the national Action Plan (NAP) for the UN Security Council Resolution 1325 by providing financial and administrative support for the relevant CSO projects dealing with war survivors;
- Promote public awareness-raising and public campaigns on the fight against gender-based violence addressing both men and women;
- Continue the implementation of CSO projects which focus on reconciliation, capacity building of victims' associations, as well as trauma healing. These projects should be dedicated to victims of both sexes, and incorporate a gender-sensitive approach.

Introduction

Background

This project exists in the context of increased attention to gender in the field of conflict, peace building and transitional justice.¹ Given new political and legal commitments and numerous initiatives to gender-sensitivity at the international level, why is the implementation of these commitments still lacking? Through in-depth research and focussed policy recommendations, Impunity Watch (IW) hopes to gain an understanding of this gap and to contribute to further implementation of international commitments through the inclusion of a gender perspective in TJNR efforts and related processes, including greater operationalisation of CEDAW and UNSCR 1325.

In 2008 IW released its report *Recognising the Past: Challenges to Combating Impunity in Guatemala*, which summarised the findings of a two-year baseline research into impunity, conducted in partnership with three local organisations. In the course of this research, IW partners raised concerns regarding the lack of attention for gender sensitivity of transitional justice processes and the limited attention for other experiences women and men experience other than sexual violence in armed conflict. IW also noted that the rights, needs and ideas of women were poorly reflected in processes aimed at dealing with the past in other post-conflict contexts. Rather than recognising and supporting women's active roles in, and contributions to, rebuilding societies after violent conflict, the predominant approach seems to perpetuate their vulnerable position. Building on these findings, IW developed a comparative research-for-policy project under its Perspectives Programme focusing on impunity for violence against women in armed conflicts in Guatemala, Bosnia and Herzegovina (hereafter referred to as Bosnia) and Burundi.

IW does systematic research on the root causes of impunity, to determine what hampers the implementation of these policies, whether or not these policies are properly addressing what is needed, and to make sure that victims' stories and voices are properly taken into account and addressed to avoid relapse into conflict and to see justice done.

To get to the root causes of impunity, Impunity Watch looks at the **pre-conflict context** and the factors that increase vulnerability during and after conflict for certain groups in society. Conflict usually exacerbates these risk factors, making vulnerable groups (be it by ethnicity, gender, religion, social status) even more vulnerable in the post-conflict era. Taking into account the pre-conflict political, economic, social and cultural context is vital in understanding the root causes of inequality, which are often conflict triggers, and also in understanding the barriers in the design, implementation and successful execution of TJNR measures in a post-conflict setting. If justice does not take into account **vulnerable groups**, which unfortunately means mostly poor – and often indigenous – women from rural areas, there can be no solid basis for a democratic state or an end to a culture of impunity. It seems that the sense of urgency and need to adopt a gender sensitive perspective in TJNR efforts, is still lacking amongst stakeholders, as our desk research and field research have confirmed. Policies unfortunately often differ from practice, and there is a continuing lack of accountability for grave human rights crimes.

¹ Although this report focuses on conflict-affected countries, it is acknowledged that transitional justice also applies to other contexts, such as periods following the end of political repression for instance.

Gender Project

Women's and men's experiences differ during armed conflict and they therefore have different obstacles to face in the aftermath of conflict. If policies are written without taking these different experiences and needs into account, or even acknowledging them, chances are high that these policies do not properly address these differing needs; needs that might have even been the root cause of the conflict. And in view of the fact that the main purpose of efforts of TJRNR is that these atrocities and conflicts will never happen again, that there will be an end to impunity for human rights violations, and that victims find justice and compensation for crimes they suffered in conflict and in the aftermath of conflict, then these policies should be relevant, inclusive and hence effective. It is therefore vital to take into account the stories and experiences of both male and female victims and voices from marginalized and vulnerable groups in society and **unearth existing inequalities and root causes of conflict**, in order to address differing needs of victims and bring an end to impunity. Our gender project needs to be seen in this light.

In order to try to answer some of these questions, Impunity Watch conducted research in Bosnia Herzegovina, Burundi and Guatemala. The key objective of the in-country research phase (November 2011 –June 2012) was to further assess the (obstacles for) gender-sensitivity of key TJRNR processes and actors in Bosnia, Burundi and Guatemala in order to formulate targeted, context-specific policy recommendations to improve TJRNR efforts. These recommendations take into account identified key obstacles and current best practices.

This research is not exhaustive, but it does aim to provide an overview of the current situation of gender-sensitive TJRNR and the main bottlenecks to an effective implementation. To provide insights on the concerns of victims by interviewing a very limited number of men and women that were affected by conflict-era violence.

The report

Desk research

To inform the field research, we have undertaken the mapping of international agreements, actors and initiatives², as well as a desk-study into processes of TJRNR in BiH. This involved studying key TJRNR documents, such as transitional justice surveys, mandates and the reports of truth commissions, court material, and country- and region-specific writings about gender and TJRNR processes, including studies by NGOs, academics, and international organisations. It also included a preliminary mapping of international, national and local key actors active on TJRNR-related processes in BiH.

Field research

The field research was conducted on TJRNR mechanisms in mentioned countries, and produced the current in-depth resource documents for each of the three countries. Although the research was primarily focused on analysing official state-led, (-sponsored, or -endorsed) TJRNR processes, attention has also been paid to other key TJRNR efforts, including those by non-state actors (e.g. NGOs and religious institutions) and the international community. We also conducted in-depth interviews with victims of conflict-era violence to better understand the similarities and differences in the needs and ideas of women and men in relation to TJRNR processes. The country reports contain detailed policy recommendations directed at both the national level and the international community.

² This document can be found at our website: www.impunitywatch.org

This report provides begins with a general introduction to Bosnia and Herzegovina (BiH) and starts in section I with a short analysis of the conflict and the way men and women were affected differently by it. In section II, we discuss the gender-sensitivity of current TJRNR processes and actors in BiH and provide analyses of the rights to truth, justice, reparations, and guarantees of non-recurrence. In each case, the international commitments that have been made are examined and we identify good practice examples and lessons learned from the country under research. Section III contains the report's main conclusions and a list of recommendations for key actors at the national and international levels.

Methodology

Desk research

As stated earlier, the in-country and comparative research phase built upon desk studies for each country and internationally. These desk studies provided insights both on progress as well as on the main obstacles to gender-sensitive TJRNR.

Interviews

In Bosnia and Herzegovina, the research primarily involved one-to-one interviews to gain in-dept insight into the topic. Interviews were held with approximately 40 key TJRNR and gender actors. Key TJRNR actors included state officials involved in designing and implementing TJRNR processes; representatives of the international community based in-country active on TJRNR processes (as advisers, actors, proponents and/or donors); representatives of international CSOs working on TJRNR issues in the respective countries; and representatives of local civil society, including key NGOs, women's groups, victims' associations, academics, etc., active on TJRNR. It should be noted that, although it was crucial to interview gender advisers to TJRNR processes (if in place), in-country researchers also aimed for interviews with senior officials not tasked with gender matters. The media, also key players (positive and negative) in relation to TJRNR processes, were not interviewed in the current project due to time constraints.

Victims' voices

Part of the in-country and comparative research is focused on providing *insights* into the specific needs and ideas of men and women with respect to TJRNR processes, with the aim of better linking survivor perspectives to TJRNR efforts and thus ensuring a truly victim/survivor-centred approach to TJRNR. The results of the in-depth semi-structured interviews that were undertaken in the light of this research illustrate the similarities and differences in the needs of men and women and provide a basis for further research.

Interview participants were chosen as a result of two geographic studies. In-country researchers selected a less studied and rural region known to be affected directly by recent armed conflict. Interviews were conducted either individually or in the form of group interviews with between 10 to 15 survivors. Interviewees are selected on the basis of their belonging to a particular victim-group, e.g. victims of sexual violence or camp inmates. Our goal was to interview a diverse group of survivors, both male and female, who could share the differing variety of their experiences during conflict. We wanted to include the full variations of how different groups of people experienced the conflict and post-conflict eras. To that end, our goal was to include internally displaced persons, widows, torture victims, and family members of disappeared persons, in order to guarantee a balanced overview of different 'victim-groups' and hence a balanced perspective on their experiences, expectations and needs.

IW cooperated closely with local civil society in designing and executing the interviews. (see ‘civil society’). Close cooperation and coordination with organisations that work with or have close ties to concerned communities was crucial to build trust as well as to ensure that civil society groups would be interested in moving forward with any outcomes.

Local Civil Society

IW works closely with a wide variety of relevant civil society actors in Guatemala, Burundi and Bosnia, including human rights and peace building NGOs, women’s groups, victims’ associations, academics, etc. Cooperating and coordinating with local civil society (NB/ by ‘local civil society’ we mean CSOs originating from the country under study) allows IW not only to build on local civil society’s expertise and experience but also to ensure sustainability of the project.

At the end of the research phase, in each country, we invited civil society organisations to a validation session in which key findings and policy recommendations were discussed. Subsequently, key civil society actors have been asked to participate in a multi-stakeholder policy consultation with other key TJRNR actors. Further discussion of findings and fine-tuning of policy implications took place at these consultations with the goals of generating country-specific policy recommendations, and enhancing dialogue between different stakeholders (including civil society) on the design and implementation of key TJRNR policy and practice.

1. A brief introduction to Bosnia and Herzegovina (BiH)

Bosnia and Herzegovina (in further text: BiH) is a country in South-Eastern Europe with a population of approximately 3.839.737, (this is an estimate as currently there is no reliable population data³). According to a largely debated preamble of the country's constitution, BiH's population consists of three ethnic groups or 'constituent peoples': Bosniaks⁴ (48%), Serbs (37.1%) and Croats (14.3%),⁵ as well as 'Others' and 'citizens'.

This controversial constitutional provision violates the basic human rights of all BiH citizens, as elaborated in the well-known *Sejdić-Finci* verdict (2009)⁶ of the European Court for Human Rights (ECtHR) in Strasbourg and is unprecedented anywhere else in the world: only if a person, by his or her own conviction, declares to be a Serb, Croat or Bosniak, does he/she obtain the right to run for political positions at the BiH House of Peoples or the tripartite BiH Presidency. Otherwise, declaring affiliation to, for instance, the Jews, Roma or Czechs, or paradoxically, even to the category of 'Bosnians' and 'Herzegovinians', the person automatically loses these political rights.⁷ The EU Progress Report 2011 as well as the recommendations of the EU Structured Dialogue urge BiH to make necessary changes to the Constitution as soon as possible.

The BiH Constitution is a product of war that is a part of a peace agreement. As it is the case with the other ex-Yugoslav countries, the history of BiH is divided into "before and after" 1991, the year when the disintegration of the Socialist Federative Republic of Yugoslavia (SFRY) took place. It is difficult to pinpoint the exact event that indicated its dissolution. Hypotheses⁸ range from the rather usual ones, such as ancient ethnic hatreds or rationalism of the elites who used nationalist tendencies in order to create mono-ethnic states that would be more easily controllable, to those seen and heard somewhat less frequently – for instance, the economic nature or religious determinants of the conflict.

BiH has a complex administrative and political system, that was established by the peace agreement and country's current constitution. It divides BiH in two entities: the Federation of Bosnia and Herzegovina (FBiH), accounting for 51% of the total territory and predominately populated by Bosniaks and Croats, and Republika Srpska (RS), 49% of the territory, with a Serb majority. Brčko District does not belong to either of the entities and is a separate self-governing unit. Besides the executive and legislative that exists at the state level,⁹ each of the entities and Brčko District has their own judiciary and administration.¹⁰ With 19% of the

³ Agency for Statistics BiH, <http://www.bhas.ba/>, a rough estimate of February 2012. The previous BiH census was conducted in 1991, thus prior to the beginning of the war. Hence, the 1991 statistics are absolutely untrustworthy. Originally, a new census was scheduled for 2011, but given the non-adoption of the long-awaited Law on Census as well as the absence of central government for almost a year and a half following parliamentary elections, the process lasted much more than expected. Eventually, in early February 2012, along with the appointment of the new BiH government, the country's Parliament adopted the Law on Census, whereby the population census is now scheduled to take place in 2013.

⁴ Bosniak is an ethnic term that relates to an ethnic group, Bosnian Muslims.

⁵ CIA World Factbook (2012). For the reasons quoted above, the population shares are only rough estimates based on the pre-war situation.

⁶ European Court of Human Rights, "*Sejdić & Finci v. BiH*", judgment 27996/06 and 34836/06a, Strasbourg, 22.12.2009.

⁷ Two and a half years after the verdict, BiH has not yet implemented the ECtHR decision. The complexity of the judgment lies in the fact that the latter goes beyond the mere violations of the plaintiffs' political rights, or an end to the discrimination against Jews and Roma in BiH. Rather, it demands a complete change of the Constitution and the Election Law of BiH. The Constitution of BiH contains a clear violation of passive voting rights of all citizens of BiH at its territory. See for instance Šoštarić. Maja (2011): "Waiting for Godot: Efficiency of the Judicial System of Bosnia and Herzegovina in the Protection of Political Rights of Minorities. In: Access to Justice in Bosnia and Herzegovina; BiH Justice Network/ USAID, Sarajevo, May 2011. Available at: <http://www.mrezapravde.ba/mpbh/english/txt.php?id=15>.

⁸ See Nettelfield, Lara (2010): "Courting democracy: The Hague Tribunal's impact in Bosnia-Herzegovina". Cambridge University Press.

⁹ The country is run by a tripartite Presidency and a Council of Ministers, as well as a bicameral Parliamentary Assembly. When it comes to judiciary, the matters are even more intricicated: although there is a court at the state level (Court of BiH) dealing with serious war crimes and the organized crime, BiH does not have a central supreme court. This implies a legal impossibility for appeal at the state level.

population living below the poverty line (2007 est.), and another 30% vulnerable to poverty¹¹, as well as the unofficial unemployment rate of 43%, BiH is one of the poorest countries in Europe.

Table 1: World ranking of Bosnia and Herzegovina for selected indicators, 2012 estimate¹²

Life expectancy at birth	unknown
Total fertility rate	unknown
GDP (purchasing power parity)	107 (out of 226)
Unemployment rate	187 (out of 199)

The highest political authority is still formally the Office of the High Representative (OHR), the chief executive officer for the international civilian presence, although the closure of the Office is being anticipated at some point.¹³ In order to complement and eventually substitute the OHR, the European Union has recently appointed its own Special Representative in Bosnia and Herzegovina (EUSR). Although BiH has not officially applied for the EU membership yet, the Stabilization and Association Agreement (SAA) with the EU was signed in June 2008. Also, the Partnership for Peace agreement with NATO was signed in late 2006. In April 2010, NATO started its Membership Action Plan (MAP) for BiH. Finally, in June 2011, the EU started the Structured Dialogue on Justice with BiH. The Structured Dialogue aims to advance structured relations on the rule of law with potential candidate countries such as BiH and to assist the country to consolidate an independent, effective, efficient and professional judicial system and to move further along its path towards the EU.¹⁴

The country has made little progress in the general area of human rights. In March 2011, Thomas Hammarberg, Council of Europe Commissioner of Human Rights, condemned Bosnia's failure to implement his recommendations, made after his 2007 visit to the country.¹⁵ Moreover, in a joint op-ed published in newspapers throughout BiH, United States Secretary of State Hillary Clinton and United Kingdom Foreign Affairs Minister William Hague expressed disappointment with the institutional gridlock of BiH that was preventing necessary reforms. They also referred to the lack of implementation of the Sejdić and Finci verdict of the ECtHR.¹⁶

For more than forty years the SFRY was a federation of six republics: Serbia, Montenegro, Croatia, Bosnia and Herzegovina, Macedonia and Slovenia, as well as two autonomous provinces: Vojvodina and Kosovo. In 1987, Slobodan Milošević came to power in Serbia, vividly encouraging Serbian nationalism and nurturing the idea of Great Serbia. What later on proved to be fatal for the SFRY happened in 1989, when Milošević abruptly revoked the autonomy of the provinces of Vojvodina and Kosovo, guaranteed by the SFRY constitu-

¹⁰ This does not by any means imply that all entities are equally organized. On the contrary, FBiH is highly decentralized and administratively divided into ten cantons, each with a separate administration and independent judiciary, whilst RS has a centralized system and administration. Brčko District is currently under the supervision of the International Supervisor, appointed by the High Representative. Therefore, it sounds almost surreal to uphold that BiH counts with two entities, three presidents and fourteen governments in total.

¹¹ CIA World Factbook (2012).

¹² Ibid.

¹³ See International Crisis Group (2011): "Bosnia: Europe's Time to Act", Europe Briefing N°59, 11 January 2011.

¹⁴ Europa.ba – Structured Dialogue, "Recommendations on the Structured Dialogue from the Second Meeting, Sarajevo, 10-11 November 2011", <http://europa.ba/Default.aspx?id=87&lang=EN>, last accessed on 12 May 2012.

¹⁵ See Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Bosnia and Herzegovina on 27-30 November 2010. <https://wcd.coe.int/ViewDoc.jsp?id=1766837>, Strasbourg, 29 March 2011.

¹⁶ See: Joint OP-ED on Bosnia and Herzegovina by Foreign Secretary William Hague and Secretary of State Hillary Clinton, http://sarajevo.usembassy.gov/speech_20110608.html. Last accessed: 20 March 2012.

tion of 1974. This event triggered a wave of independence movements in the other republics.

BiH has been a multi-ethnic state for centuries.¹⁷ Immediately prior to the beginning of the war, its population consisted of Bosnian Muslims (Bosniaks), Croats and Serbs and members of numerous ethnic minorities. Soon after Slovenia and Croatia declared independence in 1991, the Yugoslav National Army (JNA) invaded both countries. In early March 1992, while the war was raging in its neighbouring Croatia, BiH also declared independence. Following the country's international recognition, the violence escalated.

Armed conflicts involved, on one side, the JNA that was aligned with Milošević's politics, as well as its split-off, the Army of Republika Srpska (VRS), and on the other side, the Army of the Republic of Bosnia and Herzegovina (ARBiH), consisting of Bosniaks and Croats. Later on, however, fights between the Army's Bosniaks and the Bosnian Croat forces, the Croat Defence Council (HVO), also commenced. Bosniak forces in the North-West of the country self-proclaimed the Autonomous Province of Western Bosnia, allied with the VRS and fought against the ARBiH. Therefore, there were as many as four different belligerents to the conflict, and they were all opposed to each other at some point.

Serbian forces kept the capital, Sarajevo, under siege for almost four years, during which approximately 10,000 people were killed. Infamously, in July 1995, Serbian forces captured the UN protected zone of Srebrenica, executed around 8,000 Bosniak men and boys in one week. Atrocities were committed in almost all parts of BiH, so it is difficult to single out those municipalities that were most affected. Concentration camps existed on numerous locations, such as Prijedor, Zvornik, Vlasenica and Bratunac (eastern BiH), Lašva Valley, Herzegovina (in and around Mostar, Čapljina or Konjic), Bijeljina, Goražde, or Brčko.¹⁸ After the massacre of civilians at Sarajevo's Markale market in 1995, NATO forces intervened and bombed Serbian positions surrounding the city. This was followed by an agreement to lift the siege.

Following the end of the war, the Presidents of BiH, Croatia and Serbia, Alija Izetbegović, Franjo Tuđman and Slobodan Milošević, met in Dayton, Ohio and reached an agreement on a peaceful solution, known as the General Framework Agreement for Peace (GFAP), hereinafter the Dayton Peace Agreement (DPA), which was signed on 14 December 1995 in Paris, ending the armed conflict in BiH.

During the conflict, two entities were created: Republika Srpska in 1992, as a response to the Republic of Bosnia and Herzegovina's secession from the SFRY, and the Federation of BiH in 1994. The latter was created by the Washington Agreement between the warring Croat Republic of Herzeg-Bosnia (existing from 1991 to 1994) and the Republic of Bosnia and Herzegovina (the precedent of the modern state of BiH). Brčko District was established by international arbitration in 1999.

The conflict in BiH included widespread crimes against civilians, population expulsions, systematic rape and the use of concentration camps. It provoked an enormous humanitarian crisis: 97,207 people, both civilians and armed forces, lost their lives, (87,452 men and 9,756 women),¹⁹ almost 2.2 million persons were dis-

¹⁷ Malcom, Noel (2002): "Bosnia: A Short History", Pan, 3 Rev Ed.

¹⁸ BiH citizens still frown after hearing the names of infamous concentration camps such as Omarska, Keraterm, Manjača, Dretelj, Silos, Drmeljevo, Uzamnica, Heliostrom, Vojno or Čelebići, just to mention some.

¹⁹ According to Research and Documentation Center (RDC) Sarajevo data basis, "The Bosnian Book of the Dead", www.idc.org.ba/index.php?option=com_content&view=category&layout=blog&id=39&Itemid=119&lang=bs. Interview with Mirsad Tokača, RDC Director, 17 January 2012, archive of the author.



placed²⁰ and approximately 13,000 people are still missing.²¹ Incalculable human and material damage was inflicted on all sides involved.

By the UN Security Council Resolution 827, the International Criminal Tribunal for the Former Yugoslavia (ICTY) in The Hague was created. Its purpose is to address violations of international law and “contribute to the restoration and maintenance of the peace”²² in the countries of the former Yugoslavia. The Tribunal is still operational, although its closure is anticipated in 2016. Its numerous cases and competencies are currently being transferred to national judiciaries.

²⁰ Ministry of Human Rights and Refugees (2010): “Revised Strategy of Bosnia and Herzegovina for Implementation of Annex VII of the Dayton Peace Agreement”, Sarajevo.

²¹ UNDP (2009), “Transitional Justice Guidebook for Bosnia and Herzegovina”, p.10. Amnesty International (2003): “Bosnia and Herzegovina: Honouring the ghosts: Confronting impunity for “disappearances”. Available at: <http://www.amnesty.org/en/library/asset/EUR63/004/2003/en/140df5c5-d744-11dd-b024-21932cd2170d/eur630042003en.html>

²² UN Security Council Resolution 827 (1993) (S/RES/827, May 25, 1993).

2. A short analysis of gender, peace and conflict in Bosnia and Herzegovina

Any analysis of the role of gender during and after the armed conflict, first requires a basic knowledge of the Bosnian patriarchal understanding of the very concept of gender. As is frequently observed in the geographic area of South-Eastern Europe, masculinity is a stereotypical synonym for power and strength, while femininity stands for fragility and care. Kathleen Berry²³ noted that in the Mediterranean area, the notion of honour determines morality and demonstrates different levels of flexibility when it comes to men and women. Unlike a man's honour, which is perceived in these cultures as subject to change, a woman's honour is seen as inflexible. It determines a woman's social behaviour and also the honour of the man she is with. The understanding of gender equality is cultural and contextual. As one judge, president of the Association of Women Judges of BiH, puts it: *"In our mentality, where men are traditionally seen as breadwinners, women do not stand any chance to be recognized as equal. They are simply not this society's priority."*²⁴

During the socialist Yugoslavia, there was an insistence on the equality of all and women's emancipation was one of the declared objectives of the Communist Party. Many women were active participants in the National Liberation Struggle during the World War II, which reinforced the conceptual linkage of women-worker-fighter-socialist²⁵, at least in theory, was upheld. With the rise of the feminist movement, Yugoslav women saw a connection between feminism and the very ideals of socialism. Many contend that with the beginning of independence wars on the soil of the former Yugoslavia, most feminists opted for anti-nationalism (the most notable example being the Women in Black in Serbia). However, some authors argue that collective suffering reversed this trend and led to a growing nationalist patriotism for some women²⁶.

During the war, the stereotypical gender roles that existed pre-conflict resurged and were reinforced. During the 1992-1995 conflict, thousands civilians of both sexes were held as prisoners in facilities in BiH and elsewhere, where they suffered torture, sexual molestation, assault, mutilation and execution. Sexual violence against women was detected as a widespread crime in BiH during the armed conflict, but men were also targeted. BiH was the scene of some of the cruellest examples of sexual violence against both men and women: cases of sexual enslavement and sex brothels,²⁷ rape during interrogation,²⁸ sexual mutilation whereby a detainee was forced to bite off other detainee's testicles,²⁹ and other horrific incidents such as those whereby pairs of fathers and sons,³⁰ or a pair of brothers,³¹ were forced to perform fellatio on each other.

The estimated number of female victims of war rape ranges from 20,000 to 50,000³², but it is difficult to establish the exact figures because there is no accurate database, nor did many of the victims decide to

²³ Barry, Kathleen (1979): "Female Sexual Slavery", NYU Press.

²⁴ Interview with Adisa Zahiragić, Sarajevo, 18 January 2012, archive of the author.

²⁵ Berdak, Oliwia (2008): "Gender and Nationalism in Yugoslavia and Croatia: Exploring the Moral Fable". University College London.

²⁶ Ibid. and Hadžiahmić, Lejla (2010): "Women-Combatants in Defense of Sarajevo: Agents or Victims". Unpublished master's dissertation, University of Sarajevo

²⁷ ICTY, Kunarac et al. (IT-96-23 & 23/1) "Foča", Trial Chamber Judgment, 22 February 2001.

²⁸ ICTY, Furundžija (IT-95-17/1) "Lašva Valley", Trial Chamber Judgment, 10 December 1998.

²⁹ ICTY, Tadić (IT-94-1) "Prijedor", Appeals Judgment, 26 January 2000.

³⁰ Zvornik cases I-IV, tried before the High Court in Belgrade, Serbia. All verdicts are available in Serbian and Cyrillic script at <http://www.hlc-rdc.org/?cat=234&lang=de>. Last accessed: 22 May 2012.

³¹ ICTY, Mucić et al. (IT-96-21), "Čelebići", Trial Chamber Judgement, 16 November 1998.

³² The figure of 50,000 is mentioned in the Report of the Secretary-General, "In-depth Study on All Forms of Violence against Women", doc. A/61/122/Add.1 of 6 July 2006, following early estimates by the BiH government that had suggested the figure. However, the Parliamentary Assembly of the Council of Europe estimated the figure of 20,000, followed by for instance the Hammarberg report, supra note 11.

openly speak about the nightmare they experienced.³³ Rape was systematically used as a strategy and as a weapon of war during the conflict.³⁴ As a French anthropologist³⁵ explained, rape is used as a weapon of war because it deprives the victims of dignity as well as of identity. Regarding the first point, it is clear that the burden of shame and negativity is transferred from the perpetrators on to the victims, which is a completely humiliating condition for those who had already suffered the atrocities of the most personal of crimes. As for the second point, children born out of war rape are considered of a different ethnic group and therefore are often considered a 'threat' to ethnic identity.

Amy Ray³⁶ explains the phenomenon in a similar fashion: borrowing the honour-related explanation of Kathleen Barry, Ray argues that war victors do not only declare triumph over the conquered territory, but also over the opponents' women, who, given their forced sexual intercourse with the victors, have now lost all their honour, resulting automatically in an even greater deprivation of honour of those defeated in the war. This also offers explanation why many women have never made up their mind about speaking up: those who did were often banned from their parents' houses, or became targets of domestic violence inflicted by their jealous husbands, or had to go through the whole trauma over again.³⁷

The issue of male victims of war rape is an even bigger taboo within Bosnian society. Similarly to their female victims of rape, the concrete figures of male victims of war rape in Bosnia are still unknown, but there are estimates of 3000 men raped during the 1992-1995 war.³⁸ As the former president of BiH Camp Inmates Association explains³⁹, rape committed against men deprives them of masculinity, which in Bosnia, and in the Balkans generally, is seen as paramount. Also Žarkov (2007)⁴⁰ argues that in the case of the former Yugoslavia, the existence of male victims of sexual violence is generally denied, since this is not in line with societal norms and expectations about masculinity. Yet, as mentioned above, the first case at the ICTY dealt precisely with war rape of a male camp detainee.

The situation is so delicate that the male victims speak of their experiences with even more difficulty than the female war rape victims. To illustrate the obstacles these men face, it should be mentioned that only when approximately one hundred male victims of war rape now residing in Australia, contacted the ICTY in order to testify before the Tribunal,⁴¹ did it become clear how unbearable it was for these men to deal with their past in the socio-cultural context of BiH. They needed to be physically away from BiH society where the male civilian victims of war, and particular when they became victim of sexual violence, are often considered

³³ For instance, the BiH Camp Inmates Association, that has over 20,000 members, counts only 93 women, as well as 66 men, who reported to have been victims of war sexual violence (159 victims in total). These people mainly originate from Eastern Bosnia – from municipalities such as Zvornik, Višegrad or Bijeljina

³⁴ Olujić, Maria B. (1998): "Embodiment of terror: gendered violence in peacetime and wartime in Croatia and Bosnia-Herzegovina", *Medical Anthropology Quarterly*, Vol. 12, No. 1. pp. 31-50. See also: Mertus, J. and Hocevar Van Wely, O. (2004) "Women's Participation in the International Criminal Tribunal for the former Yugoslavia (ICTY): Transitional Justice for Bosnia and Herzegovina". Women Waging Peace Policy Commission. Hunt Alternatives Fund. Available at

http://www.huntalternatives.org/download/19_women_s_participation_in_the_international_criminal_tribunal_for_the_former_yugoslavia_icty_transitional_justice_for_bosnia_and_herzegovina.pdf, or Zarkov, Dubravka (2007) *The Body of War. Media, Ethnicity and Gender in the Break-up of Yugoslavia*, Durham and London: Next Wave: New Directions in Women's Studies

³⁵ Véronique Nahoum, intervention at the conference entitled "Viol de masse, une arme de guerre", organized by NGO "Mères de la Paix" and held in Sarajevo, 10 March 2012.

³⁶ See Ray, Amy E. (1997): "The Shame of It: Gender-Based Terrorism in the Former Yugoslavia and the Failure of International Human Rights Law to Comprehend the Injuries." *American University Law Review* 46, no.3 (February 1997): 793-840.

³⁷ Olujić, Maria B. (1995), "Coming Home: The Croatian War Experience." In *Fieldwork under fire: contemporary studies of violence and survival*, edited by Carolyn Nordstrom and Antonius C.G.M. Robben. Berkeley: University of California Press, pp. 186-205.

³⁸ Interview with Ruzmira Gaco, Ministry of Human Rights and Refugees, 11 May 2012, archive of the author.

³⁹ Interview with Murat Tahirović, former President of BiH Camp Inmates Association, 17 April 2012, archive of the author.

⁴⁰ See supra nota 33.

⁴¹ Interview with Anisa Sućeska-Vekić, BIRN, Sarajevo, 20 January 2012, archive of the author.

“cowards who fled” (as opposed to those “heroic men” who fought in the war) to be able to talk about their experiences.⁴²

Yet not only men fought in the war. During and in the aftermath of the war, given their shared destiny, women were inclined to form associations, organizations and lobby groups primarily on the basis of their ethnic identity, or even to join armies. A master’s thesis of a young BiH scholar, Lejla Hadžiahmić, on the female combatants in defence of Sarajevo, is a case in point. She offers an insight into the minds of several women who decided to take active part in the conflict⁴³. With her thesis Hadžiahmić debunks the traditional view according to which women actually never wage wars.

In the aftermath of the conflict, the women combatants of ARBiH formed a professional association which lasted for four years (1994-1998), but due to the lack of financial resources and general support, the association was eventually dissolved. Hadžiahmić found that unlike the first six months of the Sarajevo siege the media covered female combatants extensively, but after that period the media completely lost interest in these women. This sudden disinterest appeared simultaneously with the increase of radicalization within the armies, in this case the islamization of ARBiH. While this correlation exists, there is no proof of a causal link between the process of radicalization and the lost of interest for female combatants.

The female BiH combatants, as explicated in the master's thesis of Sunita Dautbegović⁴⁴, are today in extremely poor socio-economic conditions, forgotten and on the edge of survival. Dautbegović, who focused on all BiH’s military formations (VRS, ARBiH and HVO), analyzed three categories of female combatants: those who participated in the fighting, but were demobilized after the war; those who fought and remained in the army after the war; and those who joined the army only in the aftermath of the conflict, more concretely after the defence sector reform of 2003. While these women joined the war with enthusiasm and patriotism, Sunita Dautbegović draws a sharp contrast to the present situation, revealing that all of her interviewees said they would never again fight in a war as they did in the early 1990s,⁴⁵ because they now feel neglected, betrayed and forgotten by the state.

While the above showed that women played various active roles during the conflict and also suffered from conflict-era violence in a number of ways, they were completely excluded from the formal peace negotiations. In a recent UN study⁴⁶, the role of women in the process of concluding 21 peace agreements worldwide was assessed. Different types of their involvement were investigated: a) women as mediators, b) women as delegates of negotiating teams, c) women as signatories of peace treaties, d) women as witnesses, e) women as representatives of observing NGOs, f) women as organizers of parallel conferences / congresses on peace, g) women as gender advisors to mediators, or h) women as member of technical committees for peace agreements. In Bosnia, women did not participate in any way in concluding the Dayton Peace Accord: neither as signatories, mediators, witnesses nor negotiators. Björn Lyrwall, advisor to the EU Special Envoy Carl Bildt during the Dayton peace negotiations, recalls: “As far as I know gender aspects were never discussed, the partners were only focused on letting the armed hostilities end.”⁴⁷

⁴² Interview with Senad Jusufbegović, BiH Camp Inmates Association, 27 April 2012, archive of the author.

⁴³ See Hadžiahmić, Lejla (2010), *supra* note 25.

⁴⁴ Dautbegović, Sunita (2011): “Socio-economic situation of women combatants in post-war Bosnia and Herzegovina”. Unpublished master’s dissertation, University of Sarajevo.

⁴⁵ Interview with Sunita Dautbegović, 7 May 2012, Sarajevo, archive of the author.

⁴⁶ UN Women (2010): “Women’s Participation in Peace Negotiations: Connections between Presence and Influence”, New York.

⁴⁷ Lithander, Anna (2000): “Engendering the Peace Process: A Gender Approach to Dayton and Beyond”, Kvinna Till Kvinna, Stockholm.

The exclusion of women likely contributed to the fact that the gendered consequences were ignored and measures to address these consequences were absent. In a comprehensive report the Swedish Foundation Kvinna Till Kvinna⁴⁸ presented an analysis of the Dayton Peace Agreements (DPA) from the gender-sensitive point of view. Their report focuses on six annexes (III, IV, VI, VII, X and XI), out of the eleven annexes in total. Their overall conclusion is that the DPA is scarce on the equal rights of women or gender issues in general. For instance, In Annex III on elections, there is no promotion of women's equal rights during elections. Annex IV, which focuses on the Constitution of BiH, does not insist on the equal right of women to participate in the executive, legislative and judiciary. Annex VI on Human Rights ignores gross violations such as war sexual violence against women. Annex VII, addressing return, does not mention the difficult situation of female IDPs, refugees and returnees. Annex X on civilian peace building is not concerned with the CSO involvement in peace settlement in which many women take part. Finally, Annex XI on the International Police Task Force (IPTF), does not address the issue of domestic violence and violence against women and how this Task Force, the predecessor of today's BiH two entity police forces, would adequately deal with it.

As the present report will illustrate, even today, 17 years following the signing of the Dayton Agreement, many of the issues addressed in it and its annexes have not been resolved yet in a satisfactory manner.

There a large number of female-headed households, single mothers and/or widows in BiH. According to a UN survey⁴⁹, self-reported female-headed households represent a quarter of all households, of which widows represented 78%⁵⁰. The most vulnerable are Roma women, elderly and ailing women, as well as widows, and refugees and internally displaced persons (IDPs)⁵¹. This report will come back to separate victim categories in chapter three. At this point, it should be mentioned that poverty affects men and women in different ways, to the detriment of the latter. Women aged between 16 and 64 constitute only 35% of the BiH active workforce, which is the lowest workforce participation of women in South-Eastern Europe.⁵²

There has been a rise in domestic violence and sex trafficking during and after the conflict.⁵³ Female IDPs and refugees face specific problems. They are in a vulnerable situation, simultaneously facing economic difficulties due to the traditional gender bias in society, especially in rural areas.⁵⁴ Given the fact that their perpetrators are either still at large, or, even more paradoxically, holding important positions in public and security institutions of BiH, victims fear for their personal security and for the well-being of their children. These are

⁴⁸ Ibid.

⁴⁹ The Living Standard Measurement Survey for BiH, 2001 used in Kukanesen (2003): "Female Headed Households in BiH, UN Bosnia and Herzegovina".

⁵⁰ See Smajić, Senada and Ermacora, Sergio (2007): "Poverty amongst Female-headed Households in Bosnia and Herzegovina: an empirical analysis", *South East European Journal of Economics and Business* Vol. 2, No. 1, pp. 69-88. See also Kukanesen (2003), see supra note 48. It is still not delineated to what extent the conflict has contributed to this situation.

⁵¹ UNHCR (2005): "Update on Conditions for Return to Bosnia and Herzegovina", available at: <http://www.unhcr.org/refworld/docid/42f736424.html>. Also see Kett 2005.

⁵² Godišnji izvještaj/izvješće Vijeću ministara Bosne i Hercegovine o statusu spolova u Bosni i Hercegovini za 2008. godinu, juli 2009. (in Bosnian: Annual Report to the Council of Ministers of BiH on Gender Equality in BiH in 2008, July 2009).

⁵³ Human Rights Watch (2008): "Still Waiting: Bringing Justice for War Crimes, Crimes against Humanity, and Genocide in Bosnia and Herzegovina's Cantonal and District Courts", available at www.hrw.org/en/node/62137/section/2; , Picarelli, John T. (2002): "Trafficking, Slavery and Peacekeeping: The Need for a Comprehensive Training Program (A Conference Report UN Interregional Crime and Justice Research Institute, Turin, Italy May 9-10)", http://policy-tracc.gmu.edu/publications/TIP&PKO_EWG_Report_Final.pdf [Accessed on 9 August 2010]; SEESAC (2007): "Firearms Possession and Domestic Violence in the Western Balkans: A Comparative Study of Legislation and Implementation Mechanisms", Belgrade. Available at: http://www.seesac.org/uploads/studyrep/Domestic_Violence.pdf [Accessed on 20 July 2011]

⁵⁴ Kurbanova et.al (2011): "Overview On Vulnerability To Food Security In Bosnia And Herzegovina", May 2011, FAO REU, Available at: http://www.fao.org/fileadmin/user_upload/Europe/documents/Events_2011/BIHNAPFS/Vulnerability_en.pdf [Accessed on 1 September 2011].

also some of the major concerns for women IDPs and refugees, especially those who belong to an ethnic minority.

Like women, men are largely affected by post-traumatic stress disorder (PTSD) and other post-war traumas. While women's trauma generally is related to the violence and losses they (either directly or indirectly) suffered as civilian victims of war, men mostly are traumatised as a direct result of fighting in the war, torture and imprisonment in concentration camps. None of the trauma-related disorders are accounted for in the current legislation nor are they addressed adequately by state institutions. For help or support, both women and men have to turn to (mostly women-lead and –focussed) CSOs working on healing and trauma. The socio-cultural roles of men in society make it difficult for them to express feelings and fears and as a consequence only few seek help.

Many of these men still live in poverty, possibly as internally displaced persons and refugees. Indirectly, men are also affected emotionally as spouses of female victims of rape or torture. Also, male camp inmates were not always soldiers. It is often overlooked that there were a tremendous number of children who were camp inmates. Those young male camp inmates have become grown men who now suffer from different forms of post-traumatic disorder, and there are countless examples of how this trauma is still affecting them. As a Bosniak president of the association of female camp inmates of camp Vojno recounts: *“There is a son of one of our members with which we simply don’t know what to do. While in camp, he saw his mother being raped. Now he dropped out of college, he doesn’t communicate with anyone and he only bites his fingernails. We are doing our best to make some kind of connection to him, but it’s just so difficult”*.⁵⁵

While the previous paragraphs confirm that the recognition of and a gendered response to the harm suffered by men and women is still lacking, at the same time some progress has been made in the area of gender-mainstreaming in the public sector, although these laws and policies generally have not been implemented yet. BiH was the first country in the region to adopt the NAP, the national Action Plan for the Implementation of the UN Security Council Resolution 1325 in July 2010, but its implementation, including solid monitoring and evaluation, is still to be undertaken. The NAP contains eight objectives, one of which is entitled Enhancing support and assistance to women civilian victims of war sexual violence.⁵⁶ A working group, consisting of the representatives of Ministry of Security BiH, Ministry of Defence BiH, Ministry of Foreign Affairs BiH, Ministry of Finance BiH, Gender Centre of the FBIH, Gender Centre of RS, Centre for Demining BiH, Gender Equality Agency and civil society, participated in drafting the NAP. The Gender Equality Agency in BiH initiated the establishment of a Coordination Board for monitoring the implementation of the NAP. The Coordination Board consists of twenty members, fourteen women and six men, coming from the state institutions and civil society. The Gender Equality Agency, together with the Ministry for Human Rights and Refugees (MHRR), reports annually to the Council of Ministers on advances and obstacles in NAP-implementation. There is a set of indicators, but the implementation has so far been rather slow.

The Gender Equality Agency in BiH was established on the state level in 2004 in accordance with a decision of the Council of Ministers and according to the Law on Gender Equality that was passed in 2003. The

⁵⁵ Interview with Saja Ćorić, president, Association of Camp Detainees of the Vojno camp, 17 May 2012, Mostar, archive of the author.

⁵⁶ These are: Increasing the participation of women in decision-making positions at all levels of government in Bosnia and Herzegovina; Increasing the number of women in military and police forces and promotion of women as holders of leadership positions in military and police structures; Increased participation of women in peacekeeping operations and introducing the gender perspective in the personnel training for peacekeeping missions; Combating human trafficking; Reducing the risk of mine contaminated areas in Bosnia and Herzegovina; Enhancing support and assistance to women and girls victims of armed conflict; Increasing the knowledge and capacity of state services in implementing UNSCR 1325; and Improving cooperation with non-governmental and international organizations in the implementation of UNSCR 1325 in BiH.

Agency, together with the gender centres of the FBiH and RS, developed a gender-mainstreaming network with the commissions for gender equality at the cantonal level in the FBiH and the municipal level in RS, composed of persons nominated for gender equality issues. Therefore, at both the state and entity levels, there are gender focal points: persons nominated for gender-related issues in addition to their other responsibilities. Moreover, in 2006 the Council of Ministers of BiH adopted a Gender Action Plan (GAP) 2006-2010, which is a strategic document whose objective is gender mainstreaming in different areas of public life in BiH. A new GAP 2012-2017 is expected soon. For more on the Agency and the gender centres' involvement in the field of TJNR, please refer to section 3.4.3 of this report.

In Table 2 below, the laws regulating general gender equality are cited, whereas Table 3 lists principal strategies and action plans that promote general gender equality. Please note that this report will separately address the laws regulating gender-sensitive justice (section 3.2), reparations (section 3.3), as well as institutional reforms (section 3.4), thus dealing with area-specific gender equality at a later point.

It should be noted that women have also played an important role in rebuilding communities and society and in peace building processes. This role has often been neglected,⁵⁷ perpetuating stereotypes of women as mere victims of violence. Women are the most active leaders of the growing civil society sector in post-conflict BiH, although the positions of the individual victims offer differ from the positions of the representatives of the victims' associations (expectedly, the latter are more vocal than the former).⁵⁸ The examples of NGOs where women play a significant role are Vive žene Tuzla, Medica Zenica, Snaga žene Tuzla, Foundation of Local Democracy (FLD) in Sarajevo, Izvor (Source) Prijedor, or Centres for Civic Initiatives (CCI). CSOs such as the Helsinki Committee in Bijeljina that deal with transitional justice on an academic level, are equally made up of a clear majority of women.

Table 2: Laws regulating general gender equality in BiH

Document	Content	Year adopted
Constitution of Bosnia and Herzegovina	The Constitution guarantees equality for women and men as well as non-discrimination on the basis of gender and sexual orientation.	1995
Constitution of Republika Srpska Official Gazette of Republika Srpska, 6/92	The Constitution guarantees equality for women and men as well as non-discrimination on the basis of gender and sexual orientation.	1992
Constitution of the Federation of Bosnia and Herzegovina Official Gazette of the FBiH, 1/94.	The Constitution guarantees equality for women and men as well as non-discrimination on the basis of gender and sexual orientation.	1994

⁵⁷ For a critique of the Dayton Peace Accord as gender-blind see e.g.: Chinkin, Christine and Paradine, Kate (2001) "Vision and Reality: Democracy and Citizenship of Women in the Dayton Peace Accords," Yale Journal of International Law 26, pp 103–178, or Lithander, Anna (2000): "Engendering The Peace Process", Kvinna Til Kvinna, 2000.

⁵⁸ Interview with Selma Korjenić, TRIAL, Sarajevo, 19 January 2012, archive of the author.

Document	Content	Year adopted
Statute of Brčko District Official Gazette of BiH, 9/00 and 7/04.	The Statute guarantees equality for women and men as well as non-discrimination on the basis of gender and sexual orientation.	2000
Law on Gender Equality Official Gazette of BiH, 16/03, 102/09 and 32/10	The Law promotes gender equality and prohibits discrimination based on gender or sexual orientation; includes regulations against GBV; promotes gender equality in different sectors of society	2003
Law Prohibiting Discrimination Official Gazette of BiH, 23/09	The Law prohibits all discriminatory treatment including every exclusion, limitation, or preference based on prejudice towards any person on the grounds, among the other things, of their gender	2009

Table 3: Strategies and actions plans promoting general gender equality in BiH

Gender Action Plan (GAP) 2006-2010	GAP is a five-year strategy for gender mainstreaming in BiH. It also has a Financial mechanism for Implementation of the Gender Action Plan (FIGAP). GAP comprises activities that must be undertaken in various areas of public life.	2006
National Action Plan for the Implementation of UNSCR 1325 (2010-2013)	BiH was the first country in the region to adapt a UNSCR 1325 NAP (27 July 2010). NAP consists of eight goals (see footnote 58 above).	2010

Several interviewees have emphasized that domestic violence and violence against women are a direct consequence of the war. A number of male ex-combatants suffer from the PTSD, and have become alcoholic and aggressive. Unfortunately, in most cases women pay the toll. BiH and its two entities have adopted several laws and strategic documents in order to combat domestic violence, as visible in the following Table.

Table 4: Laws and strategies regulating the protection against domestic violence

Law on Protection against Domestic Violence FBiH Official Gazette of the FBiH, 22/05 and 51/06 and Law on Protection against Domestic Violence RS Official Gazette of RS, 118/05 and 17/08	Both laws regulate protection against family violence as well as the types and purposes of sanctions for perpetrators of violent actions	2005
Strategic Plan for the Prevention of Domestic Violence for the Federation of Bosnia and Herzegovina 2009-2011	The Plan lays down the means of protection against domestic violence in FBiH for the period 2009-2011.	2009
Strategy for Combating Domestic Violence in Republika Srpska 2009-2013	The Strategy lays down the means of protection against domestic violence in RS for the period 2009-2013.	2009
Strategy for Preventing and Combating Domestic Violence in Bosnia and Herzegovina 2009-2011 Official Gazette of BiH, 70/09	The Strategy lays down the means of protection against domestic violence in BiH, 2009-2011.	2009

There are nine safe houses where the victims of domestic violence and their children are accommodated: in Sarajevo, Banja Luka, Prijedor, Bihać, Modriča, Tuzla, Zenica and two in Mostar, all run by local CSOs. CSOs also organize SOS phone lines and legal counselling centres. Some of the safe houses, in particular those in smaller municipalities, still lack financial backing. Judging from the interviews conducted, the NGOs running safe houses have good cooperation with a vast network of local institutions, such as centres for social welfare, centres for mental health, police and judiciary,⁵⁹ although there are also some negative experiences of such cooperation.⁶⁰

⁵⁹ Interviews with Edita Pršić (Foundation for Local Democracy), 18 January 2012, Sarajevo; Suzdina Bijedić (Viva žene Tuzla), 23 March 2012, Tuzla; and Sabiha Haskić-Husić (Medica Zenica), 3 March 2012, Sarajevo, all on archive of the author.

⁶⁰ Interview with Udružene žene (United Women) Banja Luka, 28 May 2012, Banja Luka, archive of the author. Udružene žene, along with the Banja Luka center for social welfare and police, established a team for support of victims of domestic violence. The work of that team has been very suc-

Although highly commendable, the existence of the Law on Gender Equality as well as gender-related state and entity institutions has still not had sufficient impact on society. This can be attributed to a range of possible factors, some of them being BiH's traditional and patriarchal mentality; the state- and lower-level-structures that insist on a purely ethnic equality of the three principal groups (ethnocentrism), leaving abundant room for various other forms of discrimination; as well as an overwhelming politicization of virtually the entire public discourse, including the media, leaving little or no room for topics that are not necessarily directly linked to current political matters.

cessful, and this is why the members of Udružene žene were particularly surprised to receive a letter from the center for social welfare informing them they were no longer the part of the team. They have never found out the reason.

3. An in-depth assessment of the gender-sensitivity of key TJNR processes and actors in Bosnia and Herzegovina

As previously noted, IW embraces the concept dealing with the past as a set of processes of TJNR - truth, justice, reparations and guarantees of non-recurrence, with the belief that these processes can be instrumental for sustainable and profound societal transformation. The broader term of transitional justice (TJ) can be traced back to 1980s in the literature of this relatively new field, that, when South European and South American countries faced an enormous challenge of overcoming the legacies of their previous dictatorship regimes and military juntas. The UN-endorsed principles for combating impunity and dealing with the past were first drafted in 1997 by Louis Joinet and updated by Diane Orentlicher⁶¹ in 2005 and encompass the four basic rights for the victims and survivors of an armed conflict previously mentioned: the right to know; the right to justice; the right to reparation; and the right of a guarantee of non-recurrence.

In 2012, the reality of attempts to implement transitional justice have been fragmented and their success uneven. Yugoslavia is a good example of the difficulties of implementing TJ. Since 2004, a coalition of over 1900 NGOs from Bosnia, Serbia, Croatia, Macedonia, Kosovo, Slovenia and Montenegro has been pushing for the establishment of a regional fact-finding commission for the former Yugoslavia (RECOM). However, there is only limited progress in moving forward with RECOM, because there are many diverging positions regarding *what* and *whom* such a commission should represent, as well as *how* it should proceed in its work. Yet the stalemate of RECOM is definitely not the first source of misunderstanding on how to deal with the past on the soil of former Yugoslavia: the methods of work and the very purpose of existence of ICTY have been repeatedly questioned by both domestic and international policy-makers, NGOs and academics⁶².

The focus of the National Strategy for War Crimes Processing (NSWCP) (see section 3.2) is, as its name suggests, the judicial processing of war crimes cases. The NSWCP therefore does not take an integral approach. It does not, for instance, deal with the consequences of war for men and women, or with institutional reforms, although these are important to consider for coming to terms with the past and strengthen the rule of law. It is key to consider processes of TJNR from an integral perspective, which would require the inclusion of all processes related to truth, justice, reparation and non-recurrence in such a way that they would be mutually reinforcing. If such an approach is not taken, the risk exists that these processes will become isolated efforts or mechanisms (the 'ticking-the-boxes' approach), and thus fails to make use of the potential of TJNR-processes to contribute to a transformation of state and society and build sustainable peace. This is why BiH is in urgent need of a comprehensive transitional justice strategy. The drafting of the first document of its kind in the world, the BiH Transitional Justice Strategy (TJS), has been completed by an Expert Working Group (EWG) composed of 15 members (10 government officials, 3 representatives of NGOs and 2 independent experts), guided by the Ministry of Justice and the Ministry of Human Rights and Refugees of BiH, within the administrative and logistical support of the UNDP.

Following the public consultations held throughout 2008 and 2009, in January 2010 the Council of Ministers established the EWG in charge of drafting and implementing the BiH TJS. In March 2010 the members of the

⁶¹ Louis Joinet, Question of the Impunity of Perpetrators of Human Rights Violations (Civil and Political), Revised Final Report, E/CN.4/Sub.2/1997/20/Rev.1, October 2, 1997, followed by Diane Orentlicher, Updated Set of principles for the protection and promotion of human rights through action to combat impunity E/CN.4/2005/102/Add.1, February 2, 2005.

⁶² See e.g. Nettlefield, Lara (2010), *supra* note 16.

EWG were appointed. With Head and Deputy Head of the EWG being women, it is also noteworthy to say that although the gender balance of the EWG was still uneven (nine men and six women, whereby women were not only CSO representatives, but also government officials), it improved significantly if compared to the Peace Negotiations, in which no woman participated..

From April through December 2010, a wide consultation process was held and the draft of the Strategy, along with an action plan for its implementation, was finalized in July 2011. Although it was initially anticipated that the TJS final draft would be completed and forwarded to the Parliament for adoption by the end of summer 2011, that goal was not met. Information from various insider sources⁶³ indicated that several members of the EWG boycotted the process by not showing up at meetings. In addition, BiH had no government for more than 16 months following the October 2010 parliamentary elections. At the end of 2011, the government structure was agreed upon, but it was only in February 2012 that the Parliamentary Assembly of BiH finally approved it. This provoked a considerable delay in moving forward with the TJS, too.

TJS was presented for the first time at a public event held in the BiH Parliamentary Assembly on 19 June 2012. A comprehensive media campaign is anticipated in order to present the public with the content of the TJS. The principal challenge has so far been to convince the government officials that the Strategy is not contingent on the amendments to the Constitution, which is BiH's most delicate political issue⁶⁴. As of this writing (June 2012), the campaign has not yet started and the Strategy has yet to be adopted by the state. A positive development in this direction can be seen in a session of the Joint Commission for Human Rights, the Rights of the Child, Youth, Immigration, Refugees, Asylum and Ethics of the BiH Parliamentary Assembly, held in Neum, BiH on 26 April 2012, where the named Commission expressed a favourable opinion regarding the Strategy. However, this does not by any means imply that the document will be eventually adopted in the BiH Parliamentary Assembly. If adopted, the Strategy will be groundbreaking in several key aspects. As already pointed out, it will encompass the processes of truth, reparations and guarantees of non-recurrence. All the comments below refer to the first public TJS draft present in the BiH Parliament in June 2012, whereupon the key TJNR stakeholders are invited to submit their comments on the draft.

When it comes to truth, the TJS suggests a countrywide consultation process on improving the existing mechanisms of search for the missing persons, as well as the establishment of an institutional non-court based fact-finding mechanism. As for the latter, the TJS foresees the adoption of a law regulating the establishment of such non-court mechanisms. In general, it has proved difficult to reconcile the differences in standpoints of the victim representatives coming from the three principal ethnic groups. As Deputy Head of the EWG notes,⁶⁵ the Bosniak victims have expressed resistance to any form of a national truth commission and the Croat associations have not showed much interest for the issue in general, while the Serb victims' associations would be open to establishing a national (not regional!) truth commission, whereby it would have to be decentralized and probably consist in a number of smaller, BiH-wide, local commissions.

Interestingly, the outcome document does not contain any reference to a "commission", only to a "mechanism". The TJS refers to the importance of gender-sensitivity of the mechanism in a separate paragraph. While the paragraph acknowledges the necessity to take into consideration the crimes perpetrated against women and women's war experiences in general, it also limits itself to referring only to war sexual violence. In a next version of the TJS, it would be essential to encompass a broader notion of gender in TJNR, that

⁶³ Interviews with public officials 2011/2012.

⁶⁴ Interview with Aleksandra Letić, Helsinki Committee Bijeljina, 5 May 2012, Bijeljina, archive of the author.

⁶⁵ Ibid.

moves beyond considering women and the way they were affected by conflict solely as victims of sexual violence, but that recognises and responds to the different ways in which men and women were affected by conflict, and the different needs they have in the aftermath of conflict.

Besides the TJS, there is also a separate UNDP report on truth seeking was presented in the BiH Parliament in June 2012. The report entitled “Looking Back, Looking Forward”⁶⁶ offers new insights on how to approach truth seeking and telling in BiH. The report’s conclusion is that a truth commission would not be fully appropriate in today’s BiH. Rather, the report suggests a ‘forum’, a permanent body financed by the state and international donors, but simultaneously independent and autonomous, consisting of all domestic ethnic group representatives and potentially several participants from outside BiH as well. The UNDP report contends that a gender-sensitive approach is crucial on the eve of establishing any truth seeking mechanism, for the gender perspective also determines the breadth of the crimes investigated, their nature and their consequences. The report also mentions the truth commission of Peru as a good example of how gender elements can be incorporated in the work of such a commission.

Concerning reparations and memorials, the TJS foresees compensation and rehabilitation. Again, in the area of rehabilitation, TJS talks about psychosocial protection of traumatized persons, employment and inclusion of victims of war in different creative and sport activities. The TJS notes with particular attention that it is important to apply a gender-sensitive approach in the area of reparations and memorials. In particular, TJS notes, it is crucial that the rehabilitation be gender-sensitive, for it will contribute to destigmatization, devictimization and resocialization of the victims. Yet the TJS does not elaborate on this any further, and does not specify in detail how precisely rehabilitation activities are best to be rendered gender-sensitive. A national reparation fund is planned as well, but it is not elaborated in detail.

The cost of the implementation of the TJS is estimated to almost 17 million KM (€ 8.5 million). The assumption, however, is that the fund will be financed from state/entity budgets and foreign donations,⁶⁷ partly from the VAT-income or by dedicating portions of decentralized ministry budgets to victims’ reparations.⁶⁸ The institutional reforms foreseen in the TJS suggest a challenging undertaking: vetting and lustration of all public employees in office, thus building on what was already done in BiH a decade ago: vetting of police officers.⁶⁹ Finally, the TJS specifically refers to three national gender-related documents/strategies: Gender Action Plan (GAP) 2006-2010, National Action Plan for Implementation of UNSCR 1325 in BiH (NAP), and the Program of Assistance to Women Victims of War Rape, Sexual Violence and Torture 2013-2016. It is noted that the TJS is directly linked to all these documents, for they contain elements of TJNR and references to the improvement of the general situation of all victims of war, both men and women.

All the named efforts to restore justice and combat impunity in BiH are laudable. They also demonstrate that there can be many obstacles along the way. In BiH there is a general lack of understanding that, as one interviewee puts it, “Dealing with the past is not really about the past, but about the future”⁷⁰. According to him, sustainable peace first requires the democratization of the country, as well as sound and integrated proc-

⁶⁶ See Simpson, Graeme, Hodžić, Edin and Bickford, Louis (2012): “Looking Back, Looking Forward. Promoting Dialogue through Truth-Seeking in Bosnia and Herzegovina.” UNDP, Sarajevo.

⁶⁷ Interview with Goran Šimić, former employee of the Federal Ministry of Justice, FBiH. 2 December 2011, Sarajevo, archive of the author.

⁶⁸ Interview with Aleksandra Letić, supra note 67.

⁶⁹ Interview with Goran Šimić, supra note 70.

⁷⁰ Interview with Mirsad Tokača, director of the Research and Documentation Center, 17 January 2012, Sarajevo, archive of the author.

esses of truth, justice, reparations and non-recurrence measures/institutional reforms. Only then reconciliation is possible. If these elements are not seriously addressed, the risk for recurrence is high.⁷¹

3.1. Gender-sensitive truth

The enormous number of victims and the diversity and quantity of crimes committed, render former Yugoslavia a tragically fertile ground for studying transitional justice mechanisms and their impact. Apart from the verdicts of the ICTY and the national follow-up courts, whereby the discussion is regularly and heavily politicized, there has also been a constant, yet very poorly visible discussion on truth-seeking mechanisms in the region. It are mostly civil society organisations that promote truth-seeking by creating what Kurze⁷² refers to as ‘extra-judicial spaces’; that is, outside juridical processes and outside of court-rooms. Another issue at stake here is a peculiar situation of women, especially mother that are still searching for their missing children/spouses.

3.1.1. Truth commissions

There were several attempts to establish truth commissions, or at least fact-finding bodies, in the former Yugoslavia. These bodies were either disbanded after a short period of time (Serbia and Montenegro), were very limited in the extent of their work (e.g. the Srebrenica commission in BiH), or have never seen the light of the day. BiH, the country most affected by the conflict, has so far seen the largest number of attempts in forming a national truth commission or lower-level fact-finding bodies.⁷³

When it comes to a potential *national* truth commission in BiH, the idea is contested by civil society, notably victims’ associations of all ethnic affiliations, as well as by some political parties, and seemingly by men and women equally. Victims’ associations opposing the idea often quote the following reasons: 1) overall saturation with the issue (*“Everything has been said and discussed so many times, what do we need a new commission for, after all? They are just using us victims, victims of war rape in particular”*⁷⁴), 2) lack of trust in any such fact-finding body (*“It would merely serve the political purposes of one particular ethnic group”*⁷⁵) and 3) lack of consensus on one universal truth about the war in BiH (*“BiH needs three different commissions, for simply there are three different truths”*⁷⁶). Even if the word ‘truth’ is dropped from the name of such potential commission (and it becomes merely a ‘fact-finding commission’ or the like), many CSOs active in the field of transitional justice still quote similar criticism.

The initiative for a *regional* truth commission, too, encounters resistance. Still, it cannot be disputed that at the same time a large number of CSOs from the entire territory of the former Yugoslavia support the initiative and are members of the coalition that aims to establish a commission. This might also stem from the fact that the majority of respondents of the 2010 survey by UNDP on dealing with the past from a public perspective consider that it is still necessary to shed light on all the facts of the conflict⁷⁷ because the state institutions are not regarded as influential or willing enough to change the dominant understandings of the

⁷¹ Ibid.

⁷² Kurze, Arnaud (2011): “The RECOM Initiative: Struggling Efforts to Create Extra-Judicial Space”. 6th General Conference of the European Consortium for Political Research (ECPR), Reykjavik, Iceland, 2011.

⁷³ See e.g. UNDP (2009), “Transitional Justice Guidebook in Bosnia and Herzegovina”, Sarajevo.

⁷⁴ Interview with Bakira Hasečić, President, Woman Victim of War, 27 April 2012, Sarajevo, archive of the author.

⁷⁵ Interview with Željka Zovko, secretary, association of Croat camp inmates from the Canton of Herzegovina-Neretva, 31 January 2012, Mostar, archive of the author.

⁷⁶ Interview with Mirjana Simanić, president, Union of Missing and Imprisoned persons of Eastern Sarajevo, Republika Srpska, 27 April 2012, Sarajevo, archive of the author.

⁷⁷ UNDP (2010): “Facing The Past And Access To Justice From A Public Perspective, Special Report”, UNDP BiH, available at: <http://www.undp.ba/upload/News/Facing%20the%20Past%20and%20Access%20to%20Justice.pdf> [Accessed on 22 October 2010].

conflict.⁷⁸ In this context, it seems necessary to involve other actors (media and CSOs) to work on gender-sensitivity and to change the predominant socio-cultural perceptions of the roles of men and women in society.

The goal of the present report is not to comment on the establishment of regional truth or fact-finding commissions, but to comment on the likelihood of the gender sensitivity of such commissions should they be established, given the current conditions. To that end, a brief overview of different BiH-wide attempts to establish a similar body, as well as an introduction to RECOM, is needed.

In 1997, following a suggestion coming from the United States Institute of Peace (USIP), a broad coalition of organizations and individuals from civil society started preparing for a major international conference that was then held in Sarajevo in 2000. At this conference, it was concluded that a national truth and reconciliation commission needed to be established in BiH, and that all preparations for the commission were to be carried out by an NGO called Citizens' Association for Truth and Reconciliation (CATR). A draft Law on the Truth and Reconciliation Commission was subsequently developed in 2003. It was submitted to the Parliamentary Assembly of BiH for consideration and adoption. Unfortunately, it was neither considered, nor did it enter parliamentary procedure, due to the lack of a broad political consensus.

In 2005, USIP again contacted the Parliamentary Assembly of BiH. The objective was to let them reconsider developing a draft law similar to that of 2003. A working group was formed following the initiative of the NGO Dayton Project, but its efforts were suspended in 2006, this time due to strong resistance of the victims who feared that their stories would be used merely for political purposes, and that certain politically active individuals would wish to gain political points by appropriating the victims' atrocious experiences for the sake of formulating their own political narratives. Consequently, both USIP initiatives were unsuccessful, be it for the scarce political will, or for the victims' general distrust in politicians. According to a local expert on truth commissions, one of the reasons was also the scepticism coming from the ICTY, which saw in any potential commission an unnecessary duplication of what it, the Tribunal, was already doing.⁷⁹

Apart from the two failed attempts to form a national truth commission, Bosnia has also seen several initiatives to establish event-related fact-finding bodies of inquiry. In late 2003, following a decision passed by the Government of Republika Srpska, and as a response to the requests by both the then BiH Human Rights Chamber and the OHR, the Commission for Srebrenica was established. It was designed to serve as an investigative body to find the relevant facts around the events in Srebrenica between 10 and 19 July 1995. Its work, whose focus was mainly to locate mass graves and determine the fate of the missing persons, was very contested by both the Federation government, which did not consider it to be objective, but also the Republika Srpska government, which held that the Commission's activities were in a mismatch to the interests of certain political structures of that entity, since the Commission established that 7,779 persons went missing in the given period⁸⁰. The Commission's mandate ended in 2004.

Similarly, the Commission for Investigating the Truth Regarding Sufferings of the Serbs, Croats, Bosniaks, Jews and Others in Sarajevo in the period between 1992 and 1995 (Commission for Sarajevo) was established following a decision of the BiH Council of Ministers in late 2006. The initial request referred to establishing an institution to examine facts about the suffering of Serbs in Sarajevo during the armed conflict.

⁷⁸ Ibid. p. 53.

⁷⁹ Interview with Midhat Izmirlija, Sarajevo, 21 February 2012, archive of the author.

⁸⁰ UNDP (2009), *supra* note 75.

However, it was dismissed by the Parliament in a decision indicating that Serb suffering could not be separated from the suffering of all other citizens of Sarajevo, regardless of their ethnic background. This disagreement was never resolved and as a result, the Commission never actually commenced its work. Unlike the Sarajevo Commission, the Truth and Reconciliation Commission of the Municipal Assembly of Bijeljina was established in mid-2008 and even produced a report. In early 2009, however, the Commission submitted its report to members of the Municipal Assembly for consideration and adoption, but the report was not adopted. Therefore, also the Commission ceased to exist.

It is difficult to assess gender-sensitivity of all the quoted initiatives, given that they were either dismissed at the very beginning, or were active only for a brief period of time (Commission for Srebrenica, the Bijeljina Commission). When it comes to equal participation of men and women in drafting the laws or strategies related to a national truth commission, it is very difficult to assess it since the data is not available or accessible. The work of two municipal fact-finding bodies (Srebrenica and Bijeljina) is equally controversial and under the veil of mystery. Desk research suggests that the members of the Srebrenica Commission were all male, and correspondence with a Bijeljina NGO⁸¹ reveals that there were only one or two women involved in the work of the Bijeljina Commission. For the Sarajevo Commission, there is no information since the body was never established for the reasons mentioned above.

Assessing gender-sensitivity of the regional commission is an equally arduous task, for there is no such commission in place yet. The initiative for the Regional Commission for Establishing the Facts about War Crimes and Other Gross Violations of Human Rights Committed on the Territory of the Former Yugoslavia in the period from 1991-2001 (RECOM) can be traced back to 2004. In that year, a protocol between the Humanitarian Law Centre (HLC) from Belgrade, the Research and Documentation Centre (RDC) from Sarajevo and Documenta from Zagreb, was signed. This protocol called for collaboration and support between the three organizations with the scope of investigating and documenting war crimes in the states of the Former Yugoslavia. The three organizations started a regional debate on RECOM in 2005, and, since May 2006, a regional consultative process. In total, it involved 8,700 persons, 8 regional transitional justice forums, 129 consultations and 5 assembly meetings⁸². Later on, RDC left the coalition.

The regional consultation process took place in two phases. From 2006 through mid-2008, the process focused on the monitoring of war crimes trials, and the establishment of regional debates on truth-seeking mechanism. From mid-2008 through 2010, the process focussed on concrete efforts to establish RECOM. In May 2008, the Coordination Council of RECOM was established, tasked with taking over the management of the consultative process. Also, in March 2009, national coordinators for each country were appointed and finally, in May 2009, the Statute of RECOM was adopted by members of the Coordination Council.

RECOM's headquarters are supposed to be in Sarajevo and its expected operation is three years. From the outset the initiative has received backing from the International Centre for Transitional Justice (ICTJ), and is financially supported by prominent international donors.⁸³ In 2011, the One Million Signatures for RECOM' campaign was launched across the major cities of the former Yugoslavia. However, this campaign resulted in

⁸¹ Correspondence with Helsinki Committee RS, 24 May 2012, archive of the author.

⁸² See e.g. RECOM process: Results and Prospective. Available at: <http://www.zarekom.org/news/Process-Results-and-Prospective.en.html>. Last accessed on 21 May 2011.

⁸³ These include: Open Society Institute, United States Institute for Peace, Ministry of Foreign Affairs of Switzerland, OSCE Mission to Serbia, EIDHR or the Rockefeller Brothers Fund.

just over 540 000 signatures.⁸⁴ So far, the presidents of Croatia and Serbia are signatory to the RECOM campaign as well as the entire Montenegrin Parliament.

RECOM's statute introduces gender mainstreaming in two of its articles, on the selection of the commissioners (Article 24) and on the membership and appointment of selection boards (Article 27) whereby it suggests in Article 24 that in each RECOM member state, at least one commissioner needs to be a woman or a man, and in Article 27 that at least one-third of the commissioners and the members of the selection board have to be women or men respectively. The majority of victims that were interviewed during this research (see chapter 4) pointed out that they did not see any benefits RECOM would have for them personally or for anyone close to them. On the other hand, it has also been reported that several war rape victim associations were particularly supportive of RECOM during the broad public consultation process, as they saw in it an opportunity to reveal the truth about their ordeal.⁸⁵

Several state actors that were interviewed for this research⁸⁶ underline that there is competition between RECOM and the BiH Transitional Justice Strategy. While RECOM aims to uncover the 'regional truth' at the level of the former Yugoslavia, the first draft of the Strategy reveals that the latter will focus entirely on the 'national truth' in BiH. This might generate tensions between the two initiatives, since different 'truths' might arise. Although it is still not endorsed by any of the states of the former Yugoslavia, eventually, RECOM is expected to become a state-supported initiative.

While the future of RECOM is unclear at this time, there is a regional initiative to establish a Court of Women that will focus on women's perspectives on the conflict. The goal is not to constitute a judicial institution, but to create a space for truth telling, specifically designed for women. This effort is managed by several CSOs from the region has international support⁸⁷, and is modelled on over 40 previous Courts of Women from around the world⁸⁸.

So far, discussions have been held at many locations, starting with a Sarajevo preparatory workshop (October 2010), to conferences and seminars in Priština, Podgorica, or Belgrade. A series of exclusively BiH consultations took place from September 2011 through January 2012.⁸⁹ When asked about the extent to which the Court will differ from existing initiatives (RECOM in particular), Nuna Zvizdić, the director of Women to Women, one of the CSOs that promotes the Court argues: *"The Court only hopes to create a public space for empathy. It is not supposed to be a commission, or any fact-finding body whatsoever. On the contrary, it is meant to be a long-lasting process"*.⁹⁰

Corinne Kumar, the founder and the coordinator of the Courts of Women, puts it in the following way: *"The Courts of Women are an unfolding of a space, a horizon that invites us to think, to feel, to challenge, to connect, to dance, to dream. It is an attempt to define a new space for women, and to infuse this space with a new vision, a new politics. It is a gathering of voices and visions of the global south, locating itself in a dis-*

⁸⁴ Public engagement in the petition has varied considerable across the former Yugoslavia: Serbia 254,539 signatures were collected, 122,473 in Bosnia and Herzegovina, 30,057 in Montenegro, 19,668 in Croatia, 10,022 in Macedonia, and 5,342 in Slovenia.

⁸⁵ Interview with Edina Đurković, executive director, Association Transitional Justice in BiH: Responsibility and Remembrance, Coalition for RECOM, 13 March 2012, Sarajevo, archive of the author.

⁸⁶ Interviews with state officials, November 2011-April 2012, archive of the author.

⁸⁷ The members of the working group are: Women to Women (BiH), Anima (Montenegro), Center for Women Victims of War (Croatia), Center for women's studies (Zagreb), Women in Black (Serbia), Women's Network (Kosova) in cooperation with El Taller's (Tunisia).

⁸⁸ See El Taller, www.eltaller.in/?page_id=73, last accessed on 25 May 2012.

⁸⁹ Interview with Nuna Zvizdić, Women to Women, 7 May 2012, Sarajevo, archive of the author.

⁹⁰ Ibid.

course on dissent: it is in itself a dislocating practice, challenging the new world order of globalization, crossing lines, breaking new ground: listening to the voices and movements in the margins."⁹¹ The concept of the Courts of Women is therefore that of public hearings. Through public hearings, the Court of Women establishes a space where the voices of women can be heard and discussions can take place and that aims to contribute to wider (media) attention for the situation of women as well as for their ideas and demands.

The Court of Women faces many of the same challenges as RECOM. Like RECOM, the Court should be a regional undertaking, and many NGOs are expected to be involved in its operation, and, like RECOM, this brings about various problems of regional coordination, leadership and management. Where should the Court take place? How many women should be involved? How long should it last? The RECOM coalition has been struggling with identical questions for years now. The advocates of the Court like to recall the South African Court of Women (2001), which gathered thousands of women that were open and able to tell their stories and thus gained attention for the perspective of women within a conflictive context. However, within the former Yugoslavia, still torn apart by the ethnic tensions and animosities to the extent that there are legally and internationally recognized distinct states, this may not be possible. Again, this is a point of concern for RECOM too. Therefore, the organisations lobbying for the Court should first consider if and how the Court can contribute to or coordinate with RECOM and vice versa. Second, they should consider and communicate clearly to victims what the Court can bring to victims and what it cannot provide, as well as the contribution expected from victims. They should make a powerful case on why the women victims of war of the former Yugoslavia deserve a special public space and a public debate dedicated only to them.

3.1.2. The right to know: international framework and domestic legislation

Internationally, the rights of the families of the missing persons are regulated by a number of international human rights covenants which will be enumerated below:

- the International Covenant on Civil and Political Rights (ratified by the former Yugoslavia on 2 June 1971, and succeeded by BiH on 1 September 1993);
- the First Optional Protocol to the International Covenant on Civil and Political Rights (1 March 1995);
- the Convention on the Rights of a Child (ratified by the former Yugoslavia on 3 January 1991, and succeeded by BiH on 1 September 1993);
- the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (ratified by the former Yugoslavia on 10 September 1991, and succeeded by BiH on 1 September 1993);
- the Convention on the Elimination of All Forms of Discrimination against Women (ratified by the former Yugoslavia on 26 February 1982, and succeeded by BiH on 1 September 1993) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (12 July 2002).

The Rome Statute of the International Criminal Court (1998), and the Declaration on the Protection of All Persons from Enforced Disappearance (1992) are also documents that guarantee the rights of those looking for their missing.

In BiH, Article V of Annex 7 and Article IX of Annex 1A of the DPA, as well as the state-level Law on Missing Persons (2004) regulate the subject matter of unveiling the fate of thousands of BiH's missing persons. Ac-

⁹¹ See Women in Black, <http://www.womeninblack.org/en/bangalore/docs/courts-women>, last accessed on 25 May 2012.

cording to Article 4 of the Law on Missing Persons, BiH authorities are obliged to provide any available information not only to the families of missing persons, but also to the relevant institutions for the tracing of missing persons. Up to 2005, two entity commissions were in charge of the implementation of Annex VI of the DPA. These were then dissolved once the Missing Persons Institute (MPI) was established. According to the Law on Missing Persons, the MPI should help in creating a national Fund for the Missing Persons as well as create a unique Central Records of the Missing Persons (CEN). None of this has been achieved so far.

At the national level, enforced disappearance is codified as a crime against humanity, but not codified as an autonomous offence. Article 172 of BiH Criminal Code refers only to enforced disappearances committed as part of a widespread or systematic attack against any civilian population, with the knowledge of the attack. Such an approach directly excludes various acts of enforced disappearance committed during the conflict in isolated cases that do not fall under the category of a widespread or systematic attack. Also, Article 118 of the Criminal Code does not exclude the possibility of amnesty for the offence of enforced and voluntary disappearance, which is not in harmony with the UN Declaration on the Protection of all Persons from Enforced Disappearance.

Until 2004, the families of the missing persons filed their cases to the Human Rights Chamber established by Annex 6 of the DPA. After 31 December 2003, the Human Rights Commission of the BiH Constitutional Court succeeded the Human Rights Chamber. The Commission has the authority to consider pending cases received by the Human Rights Chamber on or before 31 December 2003 and also all new cases alleging human rights violations. The Commission adopts judgements on human rights violations following citizens' complaints. Yet a portion of such judgements has not been enforced by the domestic courts. Notably, there are 13 non-enforced judgements regarding missing persons, or their families; 1,183 applicants in total. Many of these are women. For instance, in the prominent case *Selimović and others vs. Republika Srpska* ("The Srebrenica Cases")⁹², out of 49 applicants, the great majority were women, some of them mothers of as many as three missing sons.

If all domestic options are exhausted, the families have the right to submit cases to the European Court for Human Rights (ECtHR) or the United Nations Human Rights Committee (HRC). There have been 28 such on-going cases so far⁹³ (15 before the ECtHR and 13 before the HRC) and again, majority of applicants are women. None of the cases has yet been completed. Complaints can also be filed to the UN Working Group on Enforced or Involuntary Disappearances (WGEID). These can be either individual or in the form of general allegations, such as one by TRIAL representing victims' associations from 2009.⁹⁴

Both the Human Rights Chamber and later the Human Rights Commission of the BiH Constitutional Court took the view that in this context a number of the rights of families of the missing, (not limited to but in this context related to women and mothers), have been violated by the state⁹⁵: the right to know; the right to private and family life (Article 8 ECHR); the right of family members not to be submitted to inhuman or degrading treatment or punishment (Article 3 ECHR); the right to prohibition of discrimination (Article 14 ECHR) and the right to an effective remedy (Article ECHR 13).

⁹² See Human Rights Chamber of the BiH Constitutional Court, Decision on admissibility and merits, (delivered on 7 March 2003), "The Srebrenica Cases" (49 applications), Case no. CH/01/8365.

⁹³ Interview with Selma Korjenić (TRIAL), 19 January 2012, Sarajevo, and correspondence with Lejla Mamut (TRIAL). TRIAL has submitted 27 complaints, while one case had been submitted to the ECtHR independently.

⁹⁴ TRIAL (2009): "General Allegation on BiH to UNWGEID", Sarajevo/Geneva.

⁹⁵ OHCHR (2005): "Report on the enjoyment of the Rights of Families of the Missing Persons in Bosnia and Herzegovina", Sarajevo.

While in some cases the missing civilians are women, in the majority of cases the missing persons are men. This brings about great suffering for those that stay behind, and particularly for their wives and families, that often experience more socio-economic problems now that they have only one income to support the family. While living without knowing the whereabouts of their loved ones would seem equally difficult for men and women, the women interviewed for this research indicate that they feel they are worse off than men. As widows they face more socio-economic hardship than men, since women whose husband is missing more often remain single, in line with social expectations, while for men that have lost their wives it is more likely that they will remarry. Our interviews also point out that women that have lost their child are considered worse off than men that lost a child. *“Every war survivor is worth compassion”*, two female Serb victims from Eastern Sarajevo conclude, *“But the mothers looking for their missing children are in the worst position by far...”* Another two female Bosniak victims fully agree: *“We are talking about flesh and blood, a child you carried for nine months and then gave birth to... A child who was taken away from you and of whose whereabouts you now know nothing. How can you as a mother possibly move on?”* This conclusion might however be also a result of social expectations; while a woman can publicly mourn over her lost child, men are expected to behave differently, to not show emotions and to be strong. They are also more reluctant to seek help. We do not know much about the way they deal with such a loss.

3.2. Gender-sensitive justice

In line with the complex BiH administrative structure, its court system is equally complex. We will start this section with a brief overview, to create a more detailed understanding of the complexities. This will also help the contextualisation of recommendations on this sector. By describing the complexity of the current system, we aim to increase the understanding of how this complexity negatively affects an increased gender-sensitivity of mechanisms and operators in this sector, since this would require a thorough intervention on various levels for this to have effect. The complexity of the justice-sector also makes it difficult to critically monitor and assess the performance on gender.

There are 48 first instance courts (28 Municipal Courts in FBiH, 19 Basic Courts in RS and one Basic Court in Brčko District), and 16 second-instance courts (10 Cantonal Courts in FBiH, 5 County Courts in RS and 1 Appellate Court in Brčko District). Also, FBiH and RS each have their own supreme courts, whereas BiH does not have a supreme court at the state level. It has a Constitutional Court only. There are two entity constitutional courts, that is, at the level of the FBiH and RS) as well. At the state level, war crimes are processed before the Court of BiH’s War Crimes Chamber (see section 3.2.3). Besides that, war crimes can be prosecuted at the lower level: before one of 10 cantonal courts in the FBiH, at the 5 district courts in RS and at the Basic Court of the Brčko District. All judges and prosecutors are appointed by the High Judicial and Prosecutorial Council (HJPC), whose 16 members include 5 women.

The implementation of the National Strategy for War Crimes Processing (NSWCP), adopted in 2008 and drafted in cooperation with the OSCE, is delayed⁹⁶ and impeded⁹⁷ by the lack of coordination between the

⁹⁶ The EU Progress Report for BiH 2011, p.13, estimates that “moderate progress has been made in processing the large backlog of unresolved war crimes cases. Some progress has nevertheless been registered in the implementation of the National War Crimes Strategy, although delays have continued in the referral of cases from the state judiciary to the Entities and Brčko District. Implementation of the strategy requires enhanced cooperation between the courts and Prosecutors’ offices, particularly at the State-level.” The report concludes that the implementation of the National Strategy needs to be “stepped up” (ibid). For its part, OSCE (2011) is optimistic to conclude that, considering the pace of trials up to now, “it seems reasonable to expect that the system could cope with a volume of 1300 cases” in “the remaining timeframe envisaged by the National Strategy”(p.22).

⁹⁷ See EU Structured Dialogue, supra note 12. The European Commission “notes with preoccupation the recent discussion at the NWCS Supervisory Board and the identification of difficulties in guaranteeing an objective, efficient, and transparent referral of cases”.

relevant institutions (courts and prosecution offices). This Strategy should efficiently reduce the backlog of 1,381 untried war crimes cases with 8,246 suspects⁹⁸. A number of cases were already transferred from the ICTY according to its Rule 11bis. Additionally, the number of non-completed cases from the ICTY that will be transferred to the domestic courts once the Tribunal is closed down still remains unknown.

The goal of the NSCWP is to process the ‘most complex’ war crimes cases in seven years (by 2015) and other, ‘less complex’, war crimes cases in fifteen years (by 2023) past the adoption of the Strategy. In order to do so, the document foresees a thorough caseload mapping by means of establishing a centralized database of all war crimes processing before the BiH judiciary at all levels (state, entity, cantons, districts/municipalities). Other goals of the NSCWP are harmonization of criminal legislation throughout BiH, strengthening of the judicial and police capacities related to dealing with war crimes cases, promoting regional cooperation in processing war crimes cases, as well as ensuring an efficient witness protection in war crimes trials before the domestic courts and prosecutor’s offices. In that light, the present report will analyze gender-sensitivity of justice delivery in BiH by addressing some of these issues below (sections 3.2.3 and 3.2.4).

The implementation of the NSCWP is monitored by the Supervisory Body consisting of nine members, coming from the relevant state- and entity-level ministries as well as the High Judicial and Prosecution Council.⁹⁹ Currently, there is only one woman out of nine members of the Supervisory Body. The most recent reports of the Supervisory Body¹⁰⁰ indicate that in 2011, war crimes cases are prioritised before all domestic courts and prosecutor’s offices, as is the harmonization of legislation and case law in war crimes processing throughout BiH and, in line with the recommendations of the second meeting of the EU-BiH Structured Dialogue,¹⁰¹ the transfer of war crimes cases from the state to entity levels.

3.2.1. International legal framework: victims of torture, rape and other forms of war sexual violence

The international legal framework on the protection of victims of torture, rape and other forms of war sexual violence has become comprehensive over the past few decades. Torture is prohibited by the Universal Declaration Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984).

According to Article 3 that is common to all four Geneva Conventions, persons taking no active part in the hostilities shall in all circumstances be treated humanely and without any discrimination. Article 12 of the First and Second Geneva Conventions (1949) establishes that women shall be treated “with all consideration” due to their sex, without explaining into much detail what this would require. Article 3 of the International Covenant on Civil and Political Rights (1966) regulates “the equal right of men and women to the enjoyment of all civil and political rights”. Similarly Article 7 states that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Finally, Article 10 of the same Covenant establishes that all persons deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

⁹⁸ OSCE (2011): “Delivering Justice in Bosnia and Herzegovina. An Overview of War Crimes Processing 2005-2010,” Sarajevo, p.21.

⁹⁹ These are: HJPC, Ministry of Justice BiH, Ministry of Justice of FBiH, Ministry of Justice of RS, Judicial Commission of Brčko District, Ministry of Security BiH, Ministry of Finance BiH, Ministry of Finance FBiH as well as the Ministry of Finance RS. See: National Strategy for War Crimes Processing (2008).

¹⁰⁰ “Working Report of the Supervisory Body (1 January – 30 September 2011)”, internal Supervisory Body document, received on 28 November 2011, archive of the author, and “Working Report of the Supervisory Body (October-December 2011)”, internal Supervisory Body document, received on 25 May 2012, archive of the author.

¹⁰¹ See EU Structured Dialogue, supra note 12.

Paying particular respect to the victims of war rape and other forms of sexual violence, the UN General Assembly adopted Declaration on the Protection of Women and Children in Emergency and Armed Conflict (1974). As already noted in Chapter 2, other relevant international documents for protection of victims of war sexual violence are Additional Protocols I and II to the 1949 Geneva Convention (1977); Convention on the Elimination of All Forms of Discrimination against Women (1979); Declaration on the Elimination of Violence against Women (1993); UN Security Council Resolutions 1325 (2000), 1820 (2008); 1888 (2009); 1889 (2009) and 1960 (2010); and the Resolution 1670 (2009) of the Parliamentary Assembly of the Council of Europe.

3.2.2. Domestic criminal legislation related to victims of torture and war sexual violence

The lack of harmonization in criminal legislation still poses one of the major obstacles for the overall efficiency of transitional justice processes in BiH. At the state level, the key legislation consists of three laws: the Criminal Code of BiH¹⁰², the Law on Criminal Procedure in BiH¹⁰³ and the Law on Protection of Witnesses Under Threat and Endangered Witnesses.¹⁰⁴ Currently two main criminal codes are being used – the Criminal Code of BiH (at the State Court of BiH/ BiH State Prosecutor's Office) and the Criminal Code of the former Socialist Federal Republic Yugoslavia (at the entity level).

The latter is often used in the entities for all crimes, with the explanation that the state and entity criminal codes came into force only in 2003, and therefore it is not possible to retroactively prosecute crimes that were due before that year. Such proceeding is in breach of the decision of the Constitutional Court of Bosnia and Herzegovina, "The Maktouf Decision".¹⁰⁵ According to the decision, the Criminal Code of Bosnia and Herzegovina should be applied by entity and Brčko District courts and prosecutor's offices in the upcoming war crimes trials. The diverging approaches of criminal laws in applied before the BiH courts result in much confusion in war crimes trials.

Another problem is that BiH authorities have not integrated international legal standards throughout the legal system. War rape and other forms of war sexual violence for example, are classified as crimes against humanity (Article 172) and crimes against civilians (Article 173). However, in Article 173 the Criminal Code of BiH insists that, in order to define war rape or other forms of sexual violence, it is necessary to prove the use of force or threat of immediate attack. This is not in accordance with applicable international framework, notably the Statute of the International Criminal Court (ICC), Article 7, nor with the practice of the ICTY and other international criminal tribunals. In a similar vein, the SFRY Criminal Code does not narrowly define crimes against humanity, and war sexual violence is only categorized as a crime against the civilian population in its Article 142.¹⁰⁶

¹⁰² Criminal Code of BiH, Official Gazette of BiH, 03/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07 and 08/10.

¹⁰³ Law on Criminal Procedure of BiH, Official Gazette of BiH, 03/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09, and 93/09.

¹⁰⁴ Law on the Protection of Witnesses under Threat and Endangered Witnesses, Official Gazette of BiH, 13/05, 53/07, 97/07, and 37/09.

¹⁰⁵ See Decision on admissibility and merits n° AP-1785/06 of Constitutional Court, 30 March 2007. OSCE (2008): "Moving Towards a Harmonized Application of the Law Applicable in War Crimes Cases before Courts in Bosnia and Herzegovina". Sarajevo, reiterated the necessity to restore equality before the law in BiH.

¹⁰⁶ Entities use the Criminal Code of SFRY, whose Article 142 codifies war rape only as a crime against civilian population and which foresees a minimal sentence of 5 years of imprisonment, which is milder when compared to Article 173 of Criminal Code of BiH, which foresees a minimum of 10 years of imprisonment. This, expectedly, reflects the overall sentencing. Occasionally, the Court of BiH uses the SFRY Code, too. A recent case is that of Slavko Lalović, who assisted two Bosnian Serb soldiers in raping female civilians in Kalinovik. For that crime, he would have been sentenced to a minimum of 10 years of imprisonment had the BiH Criminal Code been used. However, the Court applied Article 142 of the SFRY Code, resulting in the sentence of 5 years.

3.2.3. War Crimes Processing at Domestic and International Levels

The ICTY has advanced the international justice system in the area of gender crimes. It enabled persecution of sexual violence as a war crime, a crime against humanity and an act of genocide.

As of May 2012, the ICTY indicted a total of 161 individuals from the former Yugoslavia for the war crimes committed. Of these, 64 persons were sentenced, 13 acquitted, 13 were referred to national jurisdictions pursuant to the Rule 11bis, and 36 had their indictments withdrawn or are deceased. There are ongoing proceedings against 35 persons: 1 currently at pre-trial, 17 currently at trial and 17 before the Appeals Chamber.¹⁰⁷

Through the ICTY, female victims of sexual violence “became visible, personalized, recognized as one kind of victim”.¹⁰⁸ As of mid-2011, the ICTY completed a total of 20 cases that included, among others, command responsibility for or individual charges of rape or other forms of sexual violence.¹⁰⁹ In those 20 cases, 78 individuals were indicted for sexual violence and 28 were convicted. There are 20 more individuals that have been indicted for sexual violence in ongoing procedures (14 at pre-trial or trial stage, and 6 before the Appeals Chamber). Six individuals were referred to national jurisdiction.¹¹⁰

The ICTY is credited for having brought a number of landmark judgments in the area of gender crimes. It has thus advanced the international justice system and enabled persecution of sexual violence as a war crime, a crime against humanity and an act of genocide. Also, the high percentage of all those indicted (48%) and convicted (44%) perpetrators of sexual violence taken as a portion of the total number of indictments (161) and convictions before the ICTY so far, stands out as a positive example and guidance for the work of other international tribunals, as well as the ICC. The inclusion of women (as witnesses, judges, lawyers, etc.) and gender expertise at the ICTY was vital not only for the prosecution of crimes committed against women,¹¹¹ but also for the broader pursuit of gender-sensitive justice and the advancement of international law.¹¹²

There are several landmark cases to be mentioned. The case against the Bosnian Serb Duško Tadić¹¹³ was the first international war crimes trial since Nuremberg and Tokyo and the first international war crimes trial involving charges of sexual violence. The case was also important because it dealt with sexual violence against men, and not women, in the Omarska camp near Prijedor in north-western Bosnia. In the case against a Bosnian Croat and two Bosniaks, Mucić, Delić and Landžo (Čelebići case),¹¹⁴ committed against the Bosnian Serb detainees in the Čelebići camp, rape was qualified as form of torture, which again served as a legal precedent. The first case of the ICTY to concentrate entirely on the charges of sexual violence was that

¹⁰⁷ See ICTY key figures, <http://www.icty.org/sid/10586>.

¹⁰⁸ Bakšić, Muftić in Orentlicher (2010), p.44.

¹⁰⁹ Tadić (IT-94-1); Nikolić (IT- 94-2); Došen, Kolundžija and Sikirica (IT-95-8); Todorović (IT-95-9/1); Šimić (IT-95-9/2); Česić (IT-95-10/1); Rajić (IT-95-12); Bralo (IT-95-17); Furundžija (IT-95-17/1); Delalić, Delić, Mucić, and Landžo (IT-96-21); Kovač, Kunarac, and Vuković (IT-96-23, IT-96-23/1); Stakić (IT-97-24); Kos, Kvočka, Prcač, Radić, and Žigić (IT-98-30/1); Brđanin (IT-99-36); Plavšić (IT-00-39 & 40/1); Krajišnik (IT-00- 39); Banović (IT-02-65/1); Zelenović (IT-96-23/2), Krstić (IT-98-33), and Martić (IT-95-11).

¹¹⁰ See ICTY key figures, supra note 111.

¹¹¹ King, K.L. and M. Greening. (2007): “Gender Justice or Just Gender? The Role of Gender in Sexual Assault Decisions at the International Criminal Tribunal for the Former Yugoslavia”, *Social Science Quarterly*, Vol. 88, No 5, pp.1049 -1071.

¹¹² Mertus, J. and Hocevar Van Wely, O. (2004) “Women's Participation in the International Criminal Tribunal for the former Yugoslavia (ICTY): Transitional Justice for Bosnia and Herzegovina”. Women Waging Peace Policy Commission. Hunt Alternatives Fund. Available at http://www.huntalternatives.org/download/19_women_s_participation_in_the_international_criminal_tribunal_for_the_former_yugoslavia_icty_transitional_justice_for_bosnia_and_herzegovina.pdf [Accessed on 23 July 2010].

¹¹³ Tadić (IT-94-1).

¹¹⁴ Delalić, Delić, Mucić, and Landžo (IT-96-21).

against the Bosnian Croat Anto Furundžija¹¹⁵ who, although he did not commit the crime of rape himself, was present while his subordinate raped a woman during interrogation. In that case, the Tribunal held that rape constitutes a grave breach of the Geneva Conventions, as a violation of the laws and customs of war, and may be used as a tool of genocide.

The second case to deal entirely with sexual violence was that against Bosnian Serbs Kunarac, Kovač and Vuković,¹¹⁶ who, in the camps of Foča, enslaved a number of women and girls, continuously raped them and considered them their property. The judgment ascertained that sexual enslavement constituted a crime against humanity. Finally, the verdict against Krstić¹¹⁷ established a link between rape and ethnic cleansing, for it dealt with the case of a former general who commanded a corps of the Bosnian Serb Army during the Srebrenica genocide. The sentences in the verdicts of the ICTY related to sexual violence range from 3 to 40 years of imprisonment.¹¹⁸

From the introduction of the new BiH Criminal Code (2003) until the end of 2011, there were 250 completed war crimes cases before all BiH courts.¹¹⁹ For the sake of comparison, the ICTY initiated 75 and has so far completed 55¹²⁰, albeit arguably larger and more complex cases, since it became operational in 1993.¹²¹ The Court of Bosnia and Herzegovina was established in accordance with the Law on the Court of Bosnia and Herzegovina in November 2000, and it was only after five years that the Court held its first war crimes trial.

Since its establishment until the present moment, Court BiH has transferred 250¹²² less complicated cases to the entity courts. However, this has been highly problematic because the latter do not have sufficient funds in order to guarantee fair trials that comply with international standards. In turn, the Court BiH has also taken over 78 cases from the entity courts, given their particular complexity. If the entity courts were better equipped, there would have been many more than 250 decisions on transfer to lower levels. Also, there would have been more transferred cases on particularly delicate war crimes, such as war sexual violence, in case the witness support offices had been established at all entity courts.

So far there have been 31 war crimes cases before the Court of BiH concerning war rape and other forms of war sexual violence. Of those, 29 cases¹²³ have ended in final verdicts (4 case of these were settled by plea bargains), and 2¹²⁴ in first-instance verdicts. Of 75 completed cases in total by the end of 2011, 38% included sexual violence. 34 individuals have been convicted for sexual violence (32 in final verdicts, 2 in first-instance verdicts), while 5 individuals have been acquitted.¹²⁵

The WCC, following the legal precedents of the ICTY, dealt with a number of war crimes including sexual violence. Some of the most prominent judgments include the cases against Gojko Janković, Neđo Samardžić,

¹¹⁵ Furundžija (IT-95-17/1).

¹¹⁶ Kovac, Kunarac, and Vuković (IT-96-23, IT-96-23/1).

¹¹⁷ Krstić (IT-98-33).

¹¹⁸ The lowest sentence was in the case Kolundžija (3 years), and the highest in Stakić. (40 years).

¹¹⁹ OSCE (2011), supra note 100, p.22, quotes a total of 216 completed cases by September 2010. In 2011, there were additional 34 completed war crimes cases (internal OSCE statistics, received on 2 May 2012, archive of the author), making a total of 250 completed cases by the end of 2011, of course assuming that there were no cases completed in the period September – December 2010.

¹²⁰ There are 55 cases completed, 6 cases on appeal, 7 cases transferred, 8 on trial and 1 on pre-trial.

¹²¹ See ICTY-TPIY: Achievements. <http://www.icty.org/sid/324>, last retrieved on 22 May 2012.

¹²² Statistics of the Court BiH, shared by Judge Minka Kreho on 25 June 2012.

¹²³ These are the cases Bjelić, Damjanović, Janković, Lelek, Mejakić i dr., Palića, Samardžić, Šimšić, Stanković, Tanasković, Radmilo Vuković, Ranko Vuković i Rajko Vuković, Momir Savić, Nikačević, Kovač, Perković, Kujundžić, Bundalo i Zeljaja, Aškraba, Bastah i Visković, Hodžić, Fuštar, Marković, Novalić, Radić i dr., Tripković, Dolić, Pinčić, and Lalović.

¹²⁴ Cases Bogdanović and Barićanin.

¹²⁵ All data and Interview and follow-up correspondence with Judge Minka Kreho, Court BiH, Sarajevo, March and May 2012.

or Radovan Stanković, who all participated in mass rapes and brutal torturing of Bosniak women and girls in Foča; Boban Šimšić, who participated in rape of Bosniak women and girls in Višegrad; Željko Mejakić and others, who participated in torture, killings and rape of non-Serb civilians in camps of Omarska and Keraterm near Prijedor; Ratko Bundalo and Neđo Zeljalja for war crimes against Bosniaks, including rape, in Vlasenica; or Marko Radić and others for war crimes against Bosniak population, including rape, in Vojno near Mostar. The sentences in these cases vary from 5 to 34 years of imprisonment.¹²⁶

CSOs such as ACIPS have become engaged in monitoring war crimes trials of sexual violence, which is financially supported by UN Women.¹²⁷ Increasingly, entity-level courts are also processing war crimes related to war sexual violence. For instance, at the time of drafting of this report, the first-instance verdict of the County Court of Trebinje in RS sentenced Bosnian Serb Ranko Stevanović to 14 years of imprisonment for the rape of two female Bosniaks and killings of three further Bosniak civilians in the municipality of Foča in 1992.

Interestingly, women who reportedly committed war crimes during the 1992-1995 in BiH are not being tried for those crimes at courts, neither in BiH nor at the ICTY. Experts say the lack of indictments against women may reflect the fact that, in general, women carried out far fewer war crimes than men, even though there were women who committed terrible crimes. While the ICTY records only one female person convicted for war crimes (Biljana Plavšić), the Bosnian courts have so far convicted none and indicted only one, while there are ongoing investigations in some 40 further cases.¹²⁸

3.2.4. Witness protection and support in war crimes trials

Witness support and protection measures in BiH are still inadequate overall, and continue to be one of the main obstacles for victims and their families in seeking justice.¹²⁹ Various international organizations, civil society actors as well as human rights bodies have voiced concerns about this. The standard was set by the well-developed Witness Support Unit of the ICTY, which introduced different kinds of policies to facilitate victims travel to the Hague to give testimony on such topics as, such as child care policies, dependent persons' policies or attendance allowance policies. While the witness support offices of the Court of BiH and the State Prosecutor's Office have not yet reached such high standards, they serve as a good example for the entity courts, which have hardly any policies in place to ensure witness protection and support.

The laws regulating this area in BiH are the law on Protection of Witnesses under Threat and Endangered Witnesses¹³⁰ and the law on Witness Protection Program in Bosnia and Herzegovina.¹³¹ These two laws put into place a number of protective measures for persons giving testimony in court. The law on the Protection of Witnesses under Threat and Endangered Witnesses guarantees such measures as: non-disclosure of a

¹²⁶ The lowest sentence was in the case Lalović and the highest in the case Janković.

¹²⁷ Interview with UN Women, 27 January 2012, Sarajevo, archive of the author.

¹²⁸ Bosnian War's Wicked Women Get Off Lightly, available at <http://www.bim.ba/en/256/10/31692/>, retrieved at 25 April 2012-

¹²⁹ See OSCE (2010), "Witness Protection and Support in BiH Domestic War Crimes Cases. Obstacles and recommendations a year after adoption of the National Strategy for War Crimes Processing", Sarajevo. Also, the EU Progress Report (2011) reminds that "the current legal framework on witness protection remains fragmented and provisions for the protection of witnesses during and after the criminal proceedings are limited and largely inadequate." Moreover, the Commissioner for Human Rights, Council of Europe (2012): Post-war Justice and Durable Peace in the Former Yugoslavia, whereby it is recommended that "domestic witness protection systems in the region should be enhanced by allocating appropriate human and financial resources", following the recommendations of the Council of Europe Parliamentary Assembly 1784 (2011) on the protection of witnesses as a cornerstone for justice and reconciliation in the Balkans. In the latter, the Parliamentary Assembly of the Council of Europe noted with deep concern that "in the region of the former Yugoslavia, several witnesses have been killed and numerous others have been intimidated, threatened or have had their identity revealed by people determined to obstruct the course of justice and conceal the truth".

¹³⁰ Official Gazette of BiH, 13/05, 53/07, 97/07, and 37/09.

¹³¹ Official Gazette of BiH, 29/04.

witness' identity, testifying via video-link, testifying without the presence of the defendant, voice distortion, as well as witness psychological support. The law on Witness Protection Program prescribes: physical protection, identity change, relocation (for instance, into safe houses), etc. All measures of physical protection are under the authority of the State Investigation and Protection Agency (SIPA), specifically its Witness Protection Department. SIPA is active in physical protection of witnesses testifying primarily before the Court of BiH. And in some cases, should lower instances request and the Court of BiH approve it, SIPA can get involved in the physical protection of witnesses giving testimonies before the lower-level courts.

It is particularly difficult to testify in cases of war sexual violence given the high sensitivity of the issue. For such witnesses, ICTY has a special Rule 96, by which (i) no corroboration of the victims' testimony shall be required; (ii) consent shall not be allowed as a defence if the victim has been subjected to or threatened with or has had reason to fear violence, duress, detention or psychological oppression, or if the victim reasonably believed that if the victim did not submit, another might be so subjected, threatened or put in fear; and (iii) prior sexual conduct of the victim shall not be admitted in evidence. Article 264 of the Criminal Procedure Code of BiH states that the prior sexual behaviour of the victims is irrelevant during the trial, and that the consent of the victim cannot be used for the defence of an alleged perpetrator. This is in accordance with the ICTY Statute (Article 96), as well as the jurisprudence of the international tribunals, ICTY and ICTR, in cases Muhimana, Akayesu and Tadić. Unfortunately, in BiH these articles and the existing jurisprudence on the matter are often ignored.¹³²

As mentioned above, Court BiH and Prosecutor's Office of BiH are often quoted as positive examples of adequate witness protection. Entity courts lag behind considerably, although witness-protection capacities are currently being built in the courts and prosecutor's offices of Banja Luka and Eastern Sarajevo, and planned in some additional municipalities such as Brčko and Doboje. Cantonal or municipal prosecutors often complain about the cases being transferred from the state level without taking into account the lack of capacities of the lower-level prosecutor's offices and courts, notably in the area of witness protection.¹³³ Entity courts occasionally conduct special neuropsychiatric assessments in order to assess which witnesses should be protected. Not only does this take time, but it is also very costly.

OSCE (2010) analyzed the unequal degree of in-court witness protection at the entity level and recommended that entity courts draft rules of procedure and guidelines modelled after the experience of the State Court.¹³⁴ Warning of the lack of formal logistical, financial, legal and psychosocial support for witnesses testifying in war crimes cases, OSCE (2010) also noted that the role of CSOs, who frequently fill these gaps, should be regulated by a legal framework.¹³⁵

Local CSOs indeed provide information and psychological support. As already mentioned above, some notable examples are Medica Zenica and Vive žene Tuzla. Medica established the cantonal Support Network to Victims/Witnesses in War Crimes Trials, Sexual Violence Trials and Other Criminal Offences, while Vive žene is active in providing psychosocial support to the witnesses. This is something found at the Court of BiH, but given the limited resources, it is difficult to properly accommodate the needs of every witness. Victims-

¹³² Mischkowski, Gabriela and Gorana Mlinarevic (2009): "The Trouble with Rape Trials – Views of Witnesses, Prosecutors and Judges on Prosecuting Sexualised Violence during the War in the former Yugoslavia", medica mondiale e.V. Available at: http://www.medicamondiale.org/fileadmin/content/07_Infothek/Gerechtigkeit/medica_mondiale_Zeuginnenstudie_englisch_dezember_2009.pdf [Accessed on 25 July 2010], p.23.

¹³³ TRIAL and ICTY roundtable, 17 May 2012, interventions of Vesna Pranjić (Prosecutor's Office Mostar) and Žarko Milić (Prosecutor's Office Trebinje).

¹³⁴ OSCE (2010), supra note 133, p.23.

¹³⁵ Ibid, p.20.

witnesses recall the shortcomings of the domestic system. *“They simply invite us, interrogate us, use us, and forget about us,”* said Bakira Hasečić, the president of the Association Women Victims of War, and Bosniak victim of war sexual violence detained in Višegrad.¹³⁶

TRIAL (2012) notes instances in the cases of female victims of rape who had to wait in the same room together with the accused; there are cases where witnesses were summoned by threat of a monetary fine; also, there were several protected witnesses whose identity was leaked, witnesses who were threatened prior to or after testifying, as well as witnesses who were verbally insulted by the accused or his attorney in the courtroom. During the research for this report, cases were also identified where the witnesses were not informed about their right to claim the attendance allowance from the court, and that as a result many of them, despite their grave socio-economic situation, were never reimbursed for their trip to courts.¹³⁷ There were also mentions of threats and attempts of bribery.

Furthermore, there is a gap in both the Criminal Procedure Code of BiH as well as the Law on the Protection of Witnesses, since both of them actually allow for the defence to be provided with the names of witnesses at least one day prior to the trial. Witnesses are often terrified once they find out their data have been communicated to the defence. Despite their fear, many witnesses have the courage to testify before the court. As we have described earlier, there are relatively few cases on wartime sexual violence compared to other war-crime cases. However, if women do testify, it is disproportionately often on sexual violence. These women seem to have to overcome fear. *“Above all, I don’t want them to think of me as weak.”*¹³⁸ Another woman, after requesting to testify in front of her rapist without any witness protection measures, is reported to have said *“But why should I hide? I want to look him straight in the eye in order to remind him what he did to me.”*¹³⁹

But these women are a minority. Therefore, when referring to BiH, the UN Working Group for Enforced and Involuntary Disappearances (WGEID) indicated: “More should be done to protect and offer assistance to victims and witnesses, in particular women”. The Special Representative of the Secretary-General on Sexual Violence in Conflict offers an explanation: “Many of the women who testified before the national court said they would never repeat the ordeal, due to the tendency to interrogate the conduct of the victim in ways that are humiliating and legally irrelevant.”¹⁴⁰

The Court has now introduced a new practice, according to which they do not communicate the witness data to the State Prosecutor’s Office anymore, but to the SIPA instead, which then brings witnesses to the Court and informs them of the measures of protection available to them.

Establishing the Witness Support Office at the Court of BiH was not at all an easy task. The main purpose of the office is to offer psychological support for witnesses, which, as some judges and prosecutors perceived at the very beginning, risked contaminating the original witness statement. This is why the decision to open the office was initially met with some hostility and resistance. Yet as time passed, the concept was fully embraced, and the work of the office proved to be efficient. The office currently employs seven women; five

¹³⁶ Interview with Bakira Hasečić, president of the Association Women Victim of War, 27 April 2012, Sarajevo, archive of the author.

¹³⁷ Interview with Murat Tahirović, former president of the Association of Camp Inmates of BiH, 17 April 2012, Sarajevo, archive of the author.

¹³⁸ Ibid.

¹³⁹ Interview with Minka Kreho, judge, Court of BiH, 27 January 2012, Sarajevo, archive of the author.

¹⁴⁰ TRIAL (2012): “Freed, but not Free Yet! The Situation of the Former Camp Detainees in Bosnia and Herzegovina. General Allegation to the Special Rapporteur on Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Working Group on Arbitrary Detention.” Sarajevo/Geneva.

psychologists and two assistants. It is difficult to distinguish the needs of witnesses by their gender, Head of Witness Support Office at the Court BiH reports, *“because trauma is individual and each witness has to be approached differently”*.¹⁴¹ This implies that the Witness Support Office does not have a gender-policy in place that might for example consider the specific situation of female heads of households.

Male victims also face obstacles giving testimony, particularly when they were victim of wartime sexual violence.¹⁴² Given the new and tentative public discussion in BiH about the issue of war time sexual violence against women, and that they live in a society that still views a male victim as weak and despicable, even for other crimes than rape, men are understandably far less prepared than women to admit they have been raped. These societal expectations also make male emotional expression difficult. Men therefore often deny their fears and trauma, and are reluctant to seek help. This kind of emotional suppression has widespread and long term societal consequences and could lead to an increase in gender-based violence in the post-conflict era.

Male victims of war crimes other than sexual violence are also likely to suffer from fear and receive threats, but are reluctant to express or show this. One Serbian male camp inmate, detained in Kotor Varoš, reported: *“I went to court to testify, and as soon as I came back to my home town, I received several death threats. But I have nothing to fear, I would go again.”* A Bosniak male camp inmate from Brčko supports that statement: *“During the war I collected photos and press clippings of everything that was going on. I can go wherever you want me to go, and I will tell the truth.”* Similar statements come from a Croat male camp inmate from Bijelo Polje near Mostar: *“After you testify, you are supposed to go back home and continue living with the people you testified against. You have every right not to feel comfortable. But as for me, I will go again whenever I’m summoned, for I only want justice.”*

As said above, considerably fewer women than men testified in court. However, when considering cases of sexual violence that were brought before both the ICTY and the Court of BiH, more women than men testified. This implies that women’s involvement in the overall legal process and the use of women’s perspectives of conflicts and their involvement in court as a forum of justice is limited. For instance at the ICTY (since its establishment until June 2009) out of 5,494 witnesses in total, only 790 (over 14%) were women.¹⁴³ At the Court BiH, Department I (War Crimes Chamber)¹⁴⁴, in the period between May 2005 and April 2012, there were 4,598 witnesses, out of which there were only 874 women (roughly 19%). Interestingly, women witnesses constituted almost 23% of all witnesses invited by the Prosecutor’s Office (655 women out of 2,800 witnesses in total), while the defence relied on the testimonies of only 10% women witnesses (151 women out of 1505 witnesses in total). It would be interesting to further look into the reasons behind this difference to understand the root causes. From May 2005 through April 2012, 17% of all witnesses before the Court BiH (775 persons) were protected witnesses, but unfortunately it remains unknown how many of the protected witnesses were female.

Other than issues of fear, a great number of women also encounter practical obstacles to access the justice processes. For example, they cannot afford to travel to courts or to organizations that provide various forms

¹⁴¹ Interview with Alma Taso-Deljković, Head of Witness Support Office, Court of BiH, 11 May 2012, Sarajevo, archive of the author.

¹⁴² Interview with Alma Taso-Deljković, Head of Witness Support Office, Court of BiH, 11 May 2012, Sarajevo, archive of the author.

¹⁴³ Mischkowski and Mlinarevic (2009), supra note 136, p.50.

¹⁴⁴ Statistics by Witness Support Office, shared by Ms Alma Taso-Deljković, 17 April 2012, Sarajevo.

of support which affects poor women from rural areas in particular. While RS¹⁴⁵ and four cantons in the FBiH (Tuzla Canton, Canton of West Herzegovina, Zenica-Doboj Canton and Posavina Canton) have adopted laws on free legal aid, the state-level law of free legal aid is still missing. This is concluded in the BiH Progress Report 2011 and is also one of the recommendations of the EU-BiH Structured Dialogue (“On the Framework Law on Free Legal Aid, the European Commission: requests that BiH authorities adopt a Framework Law on Legal Aid, in view of ensuring equal rights of citizens before the law throughout the country, and expresses concern for a lack of specific provisions on free legal aid in some Cantons of the FBiH”).¹⁴⁶

3.3. Gender-sensitive reparations

With the exception of the German reparations to the Jews in the aftermath of Holocaust¹⁴⁷, the world has thus far not seen a comprehensive reparation effort following conflict in which at least two states are involved. The national reparations programs that are generally considered successful are those of Chile¹⁴⁸, Argentina¹⁴⁹ and Brazil¹⁵⁰ - countries that overthrew decades-long dictatorships. These new democratic governments did not oppose reparation programs that marked a clear break with the past. Yet in the absence of such circumstances, can anything be done?

International public law has long acknowledged that post-conflict contexts need reparation programs, both in international human rights instruments¹⁵¹, its practice¹⁵² and, for the first time, in the statute of an international court¹⁵³. Finally, in 2006, the General Assembly adopted the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (hereinafter: the UN Basic Principles).¹⁵⁴ These principles reiterate that the victims of serious human rights violations have the right to remedy from the state. This right is incorporated in the instrument of reparations, which in itself encompasses four elements: restitution, rehabilitation, compensation and the guarantee for non-recurrence. Please note that in this report, we consider the latter, the guarantees of non-recurrence, as a separate pillar of TJRNR, and not as a sub-element of reparations.

¹⁴⁵ RS has a department of free legal aid at the Ministry of Justice of RS. NGOs providing assistance in domestic violence cases, such as Udružene žene Banja Luka, notice a lack of gender-sensitive approach towards the domestic violence victims who seek free legal aid. Women are sometimes suggested they themselves are to be blamed for the violence inflicted to them. Interview with Udružene žene Banja Luka, 28 May 2012, Banja Luka, archive of the author.

¹⁴⁶ See EU Structured Dialogue, supra note 12.

¹⁴⁷ Colonos, Ariel and Armstrong, Andrea (2006): “German Reparations to the Jews after World War II: A Turning Point in the History of Reparations.” In *The Handbook of Reparations*, ed. Pablo de Greiff (Oxford: Oxford University Press, 2006).

¹⁴⁸ Lira, Elisabeth (2006): “The Reparations Policy for Human Rights Violations in Chile”. In *The Handbook of Reparations*, ed. Pablo de Greiff (Oxford: Oxford University Press, 2006).

¹⁴⁹ Guembe, Maria José (2006): “Economic Reparations for Grave Human Rights Violations: The Argentinean Experience”. In *The Handbook of Reparations*, ed. Pablo de Greiff (Oxford: Oxford University Press, 2006).

¹⁵⁰ Cano, Ignacio and Galvao Ferreira, Patricia (2006): “The Reparations Program in Brazil”. In: *The Handbook of Reparations*, ed. Pablo de Greiff (Oxford: Oxford University Press, 2006).

¹⁵¹ Article 8 of the Universal Declaration of Human Rights talks about ‘effective remedies’. Article 10 of the American Convention about ‘adequate compensation’, Article 63 about ‘fair compensation’ and Article 68 about ‘about compensatory damages’. Moreover, Article 9 of the International Covenant on Civil and Political Rights includes a mention of ‘an enforceable right to compensation’; Article 14 of the Convention against Torture speaks about ‘fair and adequate compensation including the means for as a full rehabilitation as possible’, while Article 50 of the European Convention speaks about ‘just satisfaction to the victim’.

¹⁵² There is a decision before the Permanent Court of International Justice (PCIJ), the court of the League of Nations, in the case *Chorzow Factory* (Germany vs. Poland, 1927), or the advisory opinion of the International Court of Justice (ICJ) on *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (2004).

¹⁵³ See the Rome Statute of the International Criminal Court, which entered into force on July 31, 2002. Available at <http://untreaty.un.org/cod/icc/index.html>, last accessed on 25 March 2012.

¹⁵⁴ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Resolution 60/147 of 16 December 2005.

Rehabilitation aims to restore the victims' dignity and should include medical and psychological care as well as legal and social services. The guarantees of non-repetition include a number of measures designed with the scope of prevention of any new potential conflict. Compensation, arguably the most tangible and most frequently discussed element of reparations and sometimes by mistake used interchangeably with the term, is according to the UN Basic Principles "any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law".

Reparations are divided into individual and collective measures. Individual reparations serve as recognition of specific harm to an individual, and of an individual's worth as a rights-bearing citizen. Collective reparations aim to respond to collective harms and harms to social cohesion (especially in places with a strong sense of collective identity), to re-establish social solidarity, and to maximize the effectiveness of existing resources. The most effective and legitimate reparations program will combine individual and collective reparations of some kind (not necessarily monetary).

The results of the UNDP survey (2010)¹⁵⁵ on citizens' perception of the transitional justice processes in BiH reveal a prevailing public belief in BiH that the level and scope of institutionalized care and support for victims of the conflict are insufficient in BiH (the opinion of 41.6% women and 38.5% men) and that victims feel abandoned by almost all segments of society (40% women and 42% men). In BiH, the compensation scheme does not exist and there is no piece of legislation or strategy that would systematically regulate the question of individual and collective material and non-material reparations, compensations, restitution, rehabilitation and forms of satisfaction¹⁵⁶ (section 3.3.1).

For its part, property restitution has been conducted in a satisfactory manner when compared to other reparation measures (section 3.3.2). When it comes to rehabilitation, there is no adequate treatment of mental health problems – the official institutions do not have the right resources, capacity and/or expertise with respect to trauma and gender (section 3.3.3). Obstacles were also identified concerning symbolic reparations, such as memorials. Memorials are built unselectively with no state coordination body in place, and some are the object of political and social struggles.¹⁵⁷ There is no monument dedicated universally to all the victims of war and it is not known if and how women are represented so far, or how women perceive the monuments currently in place.

As far as reparation-related legislation is concerned, the only such law at the state level is the Law on Missing Persons, which regulates the right of civilian victims of war to compensation. Entity legislation regulates war-related benefits for both veterans and civilian victims of war. In the Federation of BiH those laws include the Law on Principles of Social Protection, Protection of all Civilian Victims of War and Protection of Families with Children¹⁵⁸, Law on the Rights of War Veterans and their Family Members¹⁵⁹ and Law on the Rights of Demobilized Soldiers and their Family Members.¹⁶⁰ In Republika Srpska they include the Law on Protection of Civilian War Victims of Republika Srpska¹⁶¹ and Law on the Rights of Veterans, Disabled War Veterans and

¹⁵⁵ UNDP (2010), supra note 79.

¹⁵⁶ UNDP (2009), supra note 75, p.75.

¹⁵⁷ Tepić, Jasmina (2012): "Do memory initiatives have a role in addressing cultures of silence that perpetuate impunity in Bosnia and Herzegovina?" Impunity Watch, Utrecht.

¹⁵⁸ Official Gazette of the FBiH, 36/99, 54/04, 39/06, and 14/09.

¹⁵⁹ Official Gazette FBiH, 33/04 and 56/05.

¹⁶⁰ Official Gazette FBiH, 61/06, 27/08 and 32/08.

¹⁶¹ Official Gazette of RS, 25/93, 32/94, 37/07, 60/07, 111/09, and 118/09, and final text 24/10

Families of Soldiers Fallen in the Defensive and Fatherland War of Republika Srpska.¹⁶² Moreover, Republika Srpska adopted Law on the Right to a Compensation for Pecuniary and non-Pecuniary Damage, caused by the War Activities in the Period from 20 May 1992 to 19 June 1996¹⁶³ but it has been rarely used in practice for categories other than war veterans.

3.3.1. Compensation

Before analyzing the amount and eligibility for compensation for civilian victims of war in Bosnia, one should take into account the complexity of the entire system of government payments to war veterans and victims in Bosnia. There are four groups of payments in both entities: 1) payments to disabled war veterans (individual military payments), 2) payments to families of fallen or missing soldiers (family military payments), 3) payments to civilian victims (individual civilian payments) and 4) payments to families whose members (civilians) were killed or disappeared during the war (family civilian payments). Unlike civilian victims, who need to demonstrate 60% bodily damage, war veterans need to prove only 20% bodily damage in order to be eligible for payments. This is equal in both entities.

According to an instructive study of Linda Popić and Belma Panjeta¹⁶⁴ that deals with these payment categories, in 2009 in the FBiH there were 98,249 recipients of veteran payments (individual and family payments combined), as opposed to 10,950 recipients of civilian payments (individual and family payments combined). Out of these almost 11,000 recipients of civilian payments, only 621 were victims of sexual violence. In Republika Srpska, in 2009 there were only 3,843 recipients of individual and family civilian victim payments (this number is likely to include victims of sexual violence, but they were not designated) as opposed to 69,451 persons receiving individual and family war veteran payments.

It is not only the figures that are worrying. As Popić and Panjeta rightly point out, three types of war-related payments need to be distinguished: *compensation payments*, *veteran benefits* as well as *welfare payments*. While Popić and Panjeta make a case for separating veteran benefits on the grounds of their specific purpose, which is neither to increase income nor to redress, but rather to remunerate the service, compensation payments are in fact fully distinguishable from welfare assistance.

In the case of welfare payments or social assistance, eligibility is strictly dependent on income, the payments themselves are ongoing, and it is possible to lose the right to them once a sufficient level of income is achieved, as their general purpose is to alleviate poverty. Compensation payments however are a kind of reparation: eligibility is determined by the violation of a human right, the purpose is to redress a wrong and it is not possible to lose payment, because the loss of this right is in itself irreversible. It appears that the Bosnian war-related payment system categorization treats war-related compensations as a form of social welfare payments.

Both individual and family war veteran payments are paid on a monthly basis and, in cases of both civilian family payments and veteran family payments, they are (at least partially) income-tested and eligibility is based on family income (besides other factors). This puts these types of payments in the category of social assistance payments instead of a compensation for human rights violations. In all categories it is possible to

¹⁶² Official Gazette of RS, 46/04 and 53/04.

¹⁶³ Official Gazette 49/05 and 1/09.

¹⁶⁴ Popić, L. And Panjeta, B. (2010): "Compensation, transitional justice and conditional international credit in Bosnia and Herzegovina: Attempts to reform government payments to victims and veterans of the 1992-1995 war." Independent research publication supported by Royal Norwegian Embassy in Bosnia and Herzegovina and Embassy of Switzerland in Bosnia and Herzegovina. August 2009, Sarajevo.

lose the right to payment on the basis of disability level, for instance, if the situation of a victim improves. This is normally never the case with compensation payments, since it is assumed that once violated, a right cannot be reversed (except in the case of a false testimony).

War victims that were interviewed for this research, both men and (particularly) women, are not aware of the difference between (war-related) compensations and welfare assistance. As it seems, for them the link between poverty and war experience is self-evident, and the fact that they have suffered during the war leads them to deduce that their present condition is the logical and natural consequence of the war. Clearly, they do not judge it fair, but they do see the relation between the two as cause and effect. If they have managed to secure monthly war-related payments, they regularly note that those are “miserable” and “unsatisfactory”. Yet they were not aware that these payments were not intended to relieve poverty, but to repair the harm they suffer because of the war.

In brief, BiH lacks a payment system that is in line with the internationally defined categories of compensation payments. The war-related payments in BiH cannot be regarded as compensations “as espoused by international law, because eligibility is not based on a right being violated. Eligibility is based on *disability level* instead, which may or may not correspond with an experience of being a victim of gross violations of human rights and serious violations of international humanitarian law”.¹⁶⁵ The nearest approximation to compensation are the payments to civilian victims of sexual violence in the Federation: these payments are not means-tested, their purpose is to make up for suffering and not to alleviate poverty, and the victim can never lose the right to payments. It is unknown if women and men have equal access to these. In Republika Srpska, again, not the right being violated, but the physical disability is decisive, and victims of sexual violence are treated no differently than all other civilian victims of war.

If the restitution *in integrum* (restoring the victims to their status prior to the right's violation) is ruled out as impossible, there is still a dilemma: on which form of reparation should the emphasis then be placed? Should societal recognition of victims be the priority? Or should rehabilitation, and receiving corresponding medical and psychological assistance and help be offered first? Or should perhaps the financial empowerment of victims be the first priority, through rights to preferential education, employment and sufficient compensation. In most world countries, when asked about a preferred form of compensation, victims of war sexual violence responded that they favour services that meet their and their families' basic needs over the restitution of lost property or monetary compensation.¹⁶⁶ When other victims' categories are concerned, further research is required. However, thorough research on this subject is still missing in BiH.

By the same token, thorough research on this subject is still missing in Bosnia, but judging on the conditions of living of both the male and female war survivors interviewed for the case studies of this report coming from all three ethnic groups, two entities and Brčko District, the priority consists in offering them a life with dignity – be it access to healthcare services, psychological treatment, or labour market insertion. Monthly payments should by no means remain the only form of reparation these victims receive, nor should the procedure for obtaining this compensation remain as complex as it presently is.

As this report will go on to demonstrate, the violence inflicted on both women and men of BiH has had many more practical consequences than just the abhorrent war trauma. There are numerous problems related to

¹⁶⁵ Popić and Panjeta (2010), supra note 170, p. 17.

¹⁶⁶ Rubio-Marín, Ruth (2009): “The Gender of Reparations. Unsettling Sexual Hierarchies while Redressing Human Rights Violations”, Cambridge University Press.



victim-related war compensations: the victims are not recognized as such by any existing law (camp inmates), their status considerably differs in each of the entities (victims of war sexual violence), or they have never been granted the access rights to which they are entitled by the existing law (families of the missing persons).

Former camp inmates, according to some figures approximately 200,000¹⁶⁷ of them who were detained in one of at least 657¹⁶⁸ concentration camps in BiH, the Federation, do not exist as a victims' category in legislation. As previously mentioned, both entities regulate the status of war veterans and of civilian victims of war, but do not encompass the category of those who were detained and tortured in concentration camps¹⁶⁹. War veterans are considerably better off with only 20% of the bodily damage that they have to demonstrate in order to be granted the status. Yet this does not imply that their situation is not complicated. For instance, in the Federation in late 2011 the process of revision of disability pensions of former war veterans was initiated.

Civilian victims face an even more significant hardship to prove their status. In the FBiH, the status of civilian victims of war is regulated by the Law on Social Welfare, Civilian War Victims and Protection of Families with Children, and if they prove 60% disability, civilian victims are entitled to a maximum compensation of 507 KM, or 250 €, per month. The level of disability is established by ad-hoc medical commissions. In Republika Srpska, the matter is regulated by the Law on the Protection of War Victims, and in case the 60% disability is proven, the compensation amounts to between 100 and 350 KM, or 50 and 175€, per month. Moreover, the amendments to the law established the deadline for eligibility applications of December 31, 2009, which prevented many persons (above all, IDPs currently not residing in RS) from applying. In particular the Law establishes in its Article 33 that "a person who has realised the right as a civilian victim of war or a family-member of a civilian victim of war under the regulations of the Federation or a surrounding country has no right to file a request for the granting of rights under this law".

If a person was not in any of BiH's armies, and if he or she cannot prove disability of 60%, but was detained in a concentration camp and tortured, beaten up, raped or subjected to starvation and thirst, he or she is not entitled to any kind of compensation according to the entity laws. Since a state-level equivalent also does not exist, the former camp inmates face serious human rights violations given this legal loophole. BiH has a large number of camp inmates' associations, according to ethnic affiliation.

Located in Sarajevo and representing some 55,000 persons (male and female), Association of Camp Inmates of BiH, despite its suggestive name, does not represent Serb or Croat camp inmates, leaving Bosniaks as its predominant membership. As for Croats and Serbs, there is a camp association of RS in Banja Luka, while Croats are gathered around the Croat Association of Camp Inmates of the Homeland War in Mostar. Different cantons and municipalities have their own camp inmates associations, again mostly organized under their own ethnic banners. The associations are entitled to issue certificates proving the status of camp inmate. Again, given that this matter is not encompassed by the entity laws on civilian victims of war and that

¹⁶⁷ Interview with Murat Tahirović, former president of the Association of Camp Inmates of BiH, 17 April 2012, Sarajevo, archive of the author.

¹⁶⁸ See "Bosnian Atlas of War Crimes", Research and Documentation Center, Sarajevo, www.idc.or.ba.

¹⁶⁹ Yet another problem is the category of 'concentration camps' themselves. Some objects are not considered camps, but only 'objects of detention'. For the individual compensation purposes before domestic courts, this is crucial. Also, as one interviewee points out, there are problematic circumstances where for instance a group of women was trapped on a hill from which they were not able to escape, as they were surrounded by an army that consistently raped and tortured them. In such a case, the question imposes itself regarding the categorization of the mentioned hill. Formally, it is not a concentration camp, yet in practice the objection can be raised concerning the extent of freedom the victims really had. Interview with Saja Ćorić, president of the Association of the Camp Detainees of the Vojno camp, 17 May 2012, Mostar, archive of the author.

there is no state-level law that would fill the gap, the certificate of status can be used only to claim non-pecuniary damage in civil litigation processes. For instance, members of the Association of Camp Inmates of BiH have so far submitted more than 20,000 such lawsuits against RS, some also in the neighbouring countries Serbia, Montenegro or Croatia.¹⁷⁰ In turn, until 2009 the Association of Camp Inmates of RS filed 536 lawsuits against the FBiH.¹⁷¹

The outcomes of such lawsuits have been highly problematic so far. The processes are costly and the final payments, even if ordered by the courts, insecure. Since 2003, when a court in Banja Luka ordered the RS authorities to pay 4500 KM, or 9 KM (€4.5) per day to a Bosniak Zijahudin Smailagić for the 17 months he spent in a camp in Banja Luka, the verdicts have varied enormously from court to court throughout the country. In 2009, a court in Mostar decided to rule in favour of six Croat detainees from Konjic and fixed the amount of 100 KM per day. A similar per diem compensation was ruled in a case of a Serbian camp inmate who was detained in the camp Rapatnica near Srebrenik.¹⁷² Recently there have been reports of compensations reaching 1,000 KM (€ 500) per day.¹⁷³ All decisions on the payment sum are subject to full judges' discretion. This opens the way to ample political manipulation.

Both FBiH and RS have declared the compensations to be paid to the former inmates as public debt, whereby in RS the deadline for payout is 25 years, and in the Federation 50 years. In order to be able to pay, the entities will probably have to privatize several state-owned assets or issue concessions.¹⁷⁴ It should be noted though that the Croat inmates, in case of sufficient evidence, are entitled to receive both Bosnian disability (civilian/war veteran) pensions, as well as the Croatian war veteran disability pensions pursuant to an Inter-State Agreement between Croatia and BiH. These latter pensions, when compared to the BiH standards, are very high.

The state-level Law on the Rights of Victims of Torture and Civil Victims of War that would regulate the status of camp detainees and equalize their right to compensation has been in the draft stage for many years now. In 2005, BiH camp inmates associations of all three groups submitted their first report to CAT. There have been two attempts (in 2006 and 2010) to pass the draft law, but they both failed. In spite of that, when submitting their reports to CAT BiH authorities referred to the forthcoming adoption of a national Law on the Rights of Victims of Torture and Civil Victims of War, as well as the establishment of a National Fund for Compensation of Victims.¹⁷⁵ None of these has ever materialized. A new draft is currently being prepared and the process is coordinated by the Ministry of Human Rights and Refugees.

Victims of war time rape and other forms of sexual violence are another problematic category that the law has not sufficiently taken into account. In RS the victims of war time sexual violence are seen as civilian victims of war and have to undergo the standard procedure proving 60% bodily disability, while in FBiH, since 2006, such victims have been recognized as a separate category. Upon obtaining a certificate from the NGO Woman Victim of War in Sarajevo, the Association of Camp Inmates of BiH or the Croat Association of Camp Inmates of the Homeland War, or from the health commission of various institutes for medical expertise, which itself is a lengthy procedure, victims of war rape in the FBiH become directly entitled to the aforementioned amount of 507 KM. They do not have to prove the disability level. In RS, on the contrary, the issue of

¹⁷⁰ Interview with Murat Tahirović, former president of the Association of Camp Inmates of BiH, 17 April 2012, Sarajevo, archive of the author.

¹⁷¹ See UNDP (2009), supra note 75.

¹⁷² See "Ex-Camp Detainees Wait in Pain for Payouts", BIRN, <http://www.bim.ba/en/292/10/33630/?tpl=30>, 21 October 2011.

¹⁷³ Interview with Senad Jusufbegović, Association of Camp Inmates of BiH, 27 April 2012, Sarajevo, archive of the author.

¹⁷⁴ Interview with Murat Tahirović, former president of the Association of Camp Inmates of BiH, 17 April 2012, Sarajevo, archive of the author.

¹⁷⁵ TRIAL (2012), supra note 146.



war sexual violence against women is still a taboo and largely ignored. Here the focus is on male victims of PTSD and war veterans that also receive much media attention.¹⁷⁶

Although the law in FBiH provides a special status for victims of war-time sexual violence, that does not mean that things therefore run smoothly. Victims of sexual violence can claim individual compensations following a verdict. Pursuant to Articles 195 and 198 of the BiH Criminal Procedure Code, a BiH court has two options. One is to award part of a claim to the injured parties and another is to refer them to civil action. It results that courts and prosecutors rarely make use of the first option, and instruct the injured parties to take civil action,¹⁷⁷ which is costly, lengthy and often inefficient. Ms Bakira Hasečić from the association Woman Victim of War¹⁷⁸ also noted that in BiH victims of sexual violence often do not even know that, having received final verdicts, they can actually claim such compensations. They are rarely informed about such opportunity by the authorities.

The families of the missing cannot make use of their right to remedy, as discussed above. The state-level Law on Missing Persons targets families of missing civilians and soldiers. In the vast majority of cases, as previously mentioned, these are now female-headed households. In Article 11, the Law determines that the family members of missing persons “who were supported by the missing person and who are in need of support, are entitled to monthly financial support”. Given the fact that in most families the man is the main breadwinner, it is clear that in the majority of cases, those who were supported by a missing person are indeed women and children (around 98% of those missing are male).¹⁷⁹

The Law furthermore establishes that the base for calculating the amount of monthly financial support is equal to 25% of the average salary paid in Bosnia and Herzegovina and that the spouse or extramarital partner shall be entitled to the base amount (Article 13). Should the spouse enter into marriage or common-law marriage, she or he automatically loses the right to the base amount (Article 14). In order to be able to guarantee the payments, the LMP foresees the establishment of the Fund for Missing Persons, which has so far not materialized. The families are entitled to retroactive payments from the date of the adoption of the Law (November 2004), and once the Fund is in place, the beneficiaries will have to renounce all the other compensations they receive in order to be eligible for the payments indicated by the Law.

Unfortunately, given the absence of the Fund, the families have not seen their rights materialize and this is one of the reasons for their complaints before the relevant national and international bodies (see section 3.1.2). The families of the missing are in a vicious circle: despite the existence of a law guaranteeing them financial compensation, the financial mechanism securing this type of payments is currently not in place, leaving them without any compensation at all. Also, the families cannot claim individual compensations from the courts, given that there are no war crimes trials in their cases, for they still have to shed substantial light on the fate of their missing. Finally, the decisions of the BiH Constitutional Court regarding the issue of the missing persons, as we have seen, remain un-enforced.

¹⁷⁶ Interview with Udružene žene (United Women) Banja Luka, 28 May 2012, Banja Luka, archive of the author.

¹⁷⁷ Ibid, p.48.

¹⁷⁸ Interview with Bakira Hasečić, President, Woman Victim of War, 27 April 2012, Sarajevo, archive of the author.

¹⁷⁹ See UNHCR (2000): “Daunting Prospects: Minority Women: Obstacles To Their Return And Integration”, Available at: 80.65.85.77/unhcr/images/stories/Publications/proj.pdf [Accessed on 13 September 2010].

In comparison to the existing entity laws, there are several advantages¹⁸⁰ of the application of the Law on Missing Persons (once the Fund has been established). First, the Law explicitly recognizes the right to know. By emphasizing that the need to know is essentially a right, the Law helps to hold the State accountable and secures the right to remedy for the families. Second, the Law is not ethnically or territorially bounded such as the entity laws. It encompasses the entire BiH. Third, it broadens the range of families who have the right to financial compensations compared to the entity laws on social protection, and the amount of those compensations is significantly higher than guaranteed by the entity laws. Yet, it is necessary to emphasize the law guarantees this right only to families with no income.

3.3.2. Rehabilitation and reintegration

Victims of war crimes suffer physical, psychological and social consequences.¹⁸¹ There are severe, permanent and serious effects both on their economic and social circumstances, as well as on a psychological level. Many face increasing financial problems, social exclusion, medical problems, lack of adequate housing conditions and unemployment. In addition, the patriarchal context makes it even more difficult for women to face and alleviate the severe consequences of the conflict. Studies show that 80% of the victims of sexual violence who testified in the local courts and before the ICTY named a permanent pension, financial compensation, housing, psychotherapy and medical care as their major needs.¹⁸² However, many necessary elements to which these women are entitled are not yet implemented in practice, such as priority in housing and employment.

A certain number of CSOs are active in tackling the post-war problems which are not properly addressed by the state, such as offering psychosocial treatment of victims and witnesses in war crimes trials, running rehabilitation and reintegration programs for victims of torture, organizing various education and labour market reinsertion programs, managing safe houses for the victims of domestic violence, offering free legal aid services, and running projects for reconciliation and dealing with the past. Three most prominent examples of such NGOs in BiH are Vive žene Tuzla, Medica Zenica and Snaga žene Tuzla.

As previously noted, Vive žene Tuzla is active in a number of fields, notably psychotherapy and trauma healing, preparation of relevant laws and advocacy. Together with the associations of former camp detainees, mostly men, Vive žene are currently in the process of drafting a state law regulating the assistance to the victims of torture and former camp detainees. It is the 'female energy', as one of their employees puts it¹⁸³, that acts as the motor of Vive žene and that encourages them to promote the rights of the disadvantaged, women and men likewise.

Similarly, the CSO Medica Zenica was initially oriented towards women, but has since begun providing its services to men as well. As its director points out¹⁸⁴, each case is individual and there are no common approaches. Medica offers a wide range of services, starting with psychological counselling for women, men and children, medical / gynaecological services for women, day care centres for children, economic empowerment for women and girls (education/additional education, change of profession, etc.), an SOS line and a

¹⁸⁰ See OHCHR (2005), supra note 97.

¹⁸¹ Amnesty International (2009): "Whose Justice? The Women Of Bosnia And Herzegovina Are Still Waiting". Available at <http://www.amnesty.org/en/library/asset/EUR63/006/2009/en/8af5ed43-5094-48c9-bfab-1277b5132faf/eur630062009eng.pdf> [Accessed on 17 July 2010].

¹⁸² Mischkowski and Mlinarevic (2009), supra note 136, p.136.

¹⁸³ Interview with Suzdina Bijedić (Viva žene Tuzla), 23 March 2012, Tuzla, archive of the author.

¹⁸⁴ Interview with Sabiha Haskić, director of Medica Zenica, Sarajevo, 3 March 2012, archive of the author.

safe house for women victims of domestic violence, as well as education on and therapy for war trauma in the field for men, women and children. Similarly, Snaga žene Tuzla offers work therapies for female victims of war. For instance, they work with Srebrenica women who plant rose and tulip gardens.

The United Nations Population Fund (UNFPA) is currently working together with the Ministry for Human Rights and Refugees on drafting the Program of Assistance to Women Victims of War Rape and Other Forms of War Sexual Violence. The Ministry formed an Expert Working Group of ten members (five government officials and five CSO officials), headed by a woman, to work on drafting the Program. The Expert Working Group consists of specific, subject-related subgroups, and a larger group (plenum). It also has two separate focus groups of external experts.¹⁸⁵ According to the initiative, BiH will be divided in several regions¹⁸⁶ according to the number of victims of war sexual violence, whereby corresponding protocols on cooperation between victims' associations, NGOs, cantonal/municipal authorities (primarily the ministers of interior, justice, health care and social welfare), cantonal/district/municipal courts and prosecution offices, centres for mental health and centres for social welfare are expected in each region. In such an apolitical, strictly decentralized way, victims will hopefully be assisted in an efficient and timely manner.

So far, there is a similar protocol that was been signed in Zenica for the Canton Zenica-Doboj in October 2011 with seventeen signatories. They established the Support Network to Victims/Witnesses in War Crimes Trials, Sexual Violence Trials and Other Criminal Offences. The protocol is expected to serve as a model for other regions, with the Canton of Central Bosnia being the second canton to sign the protocol.¹⁸⁷ While this commendable initiative was intentionally brought back to the local level in order to circumvent a very probable political stalemate in the Parliamentary Assembly of BiH (following the experience of the Transitional Justice Strategy), there is fear that such a bottom-up approach might represent a "cheapening of the problem"¹⁸⁸ should it not simultaneously be taken up by the state at the national level, for the principal political stakeholders could again get away with avoiding direct responsibility.

The Ministry for Human Rights and Refugees recently presented the promising "Program of Assistance to Women Victims of War Rape, War Sexual Violence and Torture 2013-2016". It aims to guarantee victims' access to processes of rehabilitation, re-socialization, psychological services, and services of mental and reproductive health, education and labour market reintegration, regardless whether they live in urban or rural areas. Despite its (still tentative) name which explicitly focuses on female victims, an official from the Ministry indicated that it will address the male survivors of war sexual violence too.¹⁸⁹

Families of the missing face difficult psychological, social and economic conditions, as an ICMP official confirms¹⁹⁰, particularly since most missing persons are men, thus leaving families without their traditional breadwinners. Since it is more difficult for women to find work than for men, in combination with a high unemployment rate, women who are now heads of household find themselves in challenging financial situations, exacerbated by the fact that they often lack social protection and healthcare. Given that the Law on Missing Persons (LMP) is not being implemented when it comes to reparations (neither financial, nor other

¹⁸⁵ Interview with Ruzmira Gaco, Ministry for Human Rights and Refugees of BiH, 11 May 2012, archive of the author.

¹⁸⁶ For now, it is eleven regions, with the possibility that one more (Banja Luka) will be added. The regions are centered in the cities of Sarajevo, Mostar, Prijedor, Foča, Goražde, Bihać, Brčko, Tuzla/Srebrenica, Zenica, Doboj and Derventa. Interview with Ruzmira Gaco, Ministry for Human Rights and Refugees of BiH, 11 May 2012, archive of the author.

¹⁸⁷ Interview with Sabiha Haskić, director of Medica Zenica, Sarajevo, 3 March 2012, archive of the author.

¹⁸⁸ Interview with international public official, Sarajevo, 2012.

¹⁸⁹ Interview with Ruzmira Gaco, Ministry for Human Rights and Refugees of BiH, 11 May 2012, archive of the author.

¹⁹⁰ Interview with Viktorija Ružičić-Tokić, International Commission for the Missing Persons (ICMP), 20 January 2012, archive of the author.

benefits such as employment or healthcare, are visible in practice), families can receive certain benefits only if they fulfil the criteria of the entity laws regulating the status of civilian victims of war.

According to Article 18 of the LMP, only children of missing persons have priority access to employment and education. Families of the missing are entitled to the same healthcare coverage as employed individuals. Yet none of this has so far been the case. The LMP, when compared to the existing entity laws on social protection, has many positive components, as it encompasses the rights to healthcare, social protection or property. When it comes to rehabilitation and reintegration however, there are still many shortcomings. It does not support employment of the spouses of the missing persons (in most cases women), but only of their children. Also, the law does not include any provision that would specifically support families of missing persons who are also displaced but do not want to return to their pre-war place of residence. Nor does it respond to the particular health care needs of families of missing persons, especially in terms of psychological trauma.¹⁹¹

3.3.3. Restitution

During the war, more than half of BiH's population was displaced. The database of the Ministry for Human Rights and Refugees suggests that out of approximately 2.2 million displaced persons, 1.2 million were refugees and 1 million were internally displaced. Over a million persons have returned, but, according to the UNHCR statistics, there are still 113,000 internally displaced persons in need of a solution. The international community still monitors the restitution process through the Property Law Implementation Program (PLIP) envisaged by Annex VII of the Dayton Peace Agreement.

Following the end of the war, in 1997, the Return and Reconstruction Task Force (RRTF) within the OHR was established. Its task was to coordinate the process of return by providing housing and facilitating sustainable return (access to jobs, education, healthcare, etc.). In 2000, RRTF was replaced by the newly established Ministry for Human Rights and Refugees. Property restitution can be considered the only state-led reparation initiative in BiH, although the process of sustainable return, implying the possibility of reintegration, has not taken place so far. As regulated by the Annex VII of DPA, the Commission for Real Property Claims for Displaced Persons and Refugees (CRPC) was established in 1996. Its mandate expired in 2003. It returned almost 95% of all deprived and occupied property.¹⁹² Following the provisions of Article XVI of Annex VII, national authorities transferred the competencies of the CRPC to the entities.

The principal problem that arose once these responsibilities were transferred to the entities was that the fate of hundreds of citizens' complaints to the CRPC decisions which were filed during the mandate of the already dismantled CRPC. 700 appeals, on which objections were given in a due time by interested parties, remained unsolved. At the beginning of 2004, the entities adopted legislation whose scope was to deal with those unresolved cases. However, the Council of Ministers of BiH and the entity governments also established a new, domestic CRPC in 2004, in the belief that it would solve all the remaining cases by the end of that same year. That did not happen, so the mandate of the new commission was extended on several occasions. In 2009, given the lack of agreement of the state and entity government, the commission ceased to exist. Since then, there have been attempts to re-establish the domestic CRPC and solve the remaining

¹⁹¹ OHCHR (2005), *supra* note 97.

¹⁹² Arnaut, Srđan (2011): "Komisija za raseljena lica i izbjeglice (CRPC)", [Commission for Real Property Claims (CRPC)] Foundation Public Law Center, Sarajevo.

cases,¹⁹³ yet the returnees in question have found themselves in a limbo because they do not know who to hold accountable for not resolving their claims and where to go to seek help to resolve their situations.

The BiH Strategy for Implementation of Annex VII of the Dayton Peace Agreement was developed in 2002 and represented the first common framework document at the level of BiH State government that defined goals and planned actions and reforms for the final implementation of Annex VII. In spite of these efforts, some citizens have not received full access to all of their property rights. As a result, the government revised the Strategy in 2010. During the revision, particular attention was paid to the matter of compensation prescribed by Annex VII. While the document often speaks of non-discrimination, gender as a particular category is not specified.

The children of the returnees and displaced persons are guaranteed a number of rights, much like the families of the missing persons. However, women returnees are not. There are various CSOs that work with returnees, some specifically focusing on women. They found that many women returnees are considered materialistic and face prejudice and lack of understanding of society when they claim property, because in Bosnian society, it is perceived that this is the job of men.¹⁹⁴ Many female-headed families and single women live in acute poverty as a direct result of displacement.

A Bosnian NGO called Transcultural Psychosocial Educational Foundation (TPO) from Sarajevo, with support from the Norwegian Government, has published a series of reports on the situation of female returnees in selected municipalities. Their gender-sensitive situational analysis was the first attempt to better understand the situation and to propose measures to improve the status of returnees. These measures included the promotion of gender mainstreaming in order to achieve equality and equal opportunities for women and men. Two other TPO publications, available only in local language and entitled "Developing an active labour market with focus on returnees" and "Gender-sensitive analysis of legal documents in the field of social and health protection, labour and employment," focus on problems related to sustainable return, employment and gender equality. The principal recommendation emerging from the reports is the need to educate and train unemployed women returnees so they are empowered to improve their social and economic status.

3.4. UN policies regarding Gender-sensitive measures of non-recurrence

There are a number of international instruments calling for gender mainstreaming in public life, administration and security sector institutions and, importantly, protection of women during and in the aftermath of armed conflict. Some of the notable predecessors to the United Nations Security Council resolutions of 2000 and beyond, are the Convention of the Elimination of All Forms of Discrimination Against Women (CEDAW) dating back to 1979, as well as the Beijing Platform for Action at the Fourth World Conference on Women from 1995.

A groundbreaking event happened in year 2000, when the UN Security Council passed its Resolution 1325 (2000), explicitly integrating the agenda of the women's movement to peace and security issues. The latter, entitled "Women, Peace and Security", calls on the UN Secretary-General to "seek to expand the role and contribution of women in United Nations field-based operations". It confirms the need to involve women in the peacemaking process and to consider and respond to "the special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction". This demon-

¹⁹³ Ibid.

¹⁹⁴ Interview with Milada Hodžić, Izvor Prijedor, 27 April 2012, Sarajevo, archive of the author.

strates that the UN Security Council is well aware of the fact that the issue of gender, peace and security goes well beyond the widespread problem of war sexual violence against women and recognised that female and male victims of conflict, be they widows, the families of the missing, IDPs or refugees, or victims of torture and sexual violence, have specific needs during and after the armed conflict that require a gender-sensitive response. BiH is a prime example of this.

UNSCR 1325 (2000) calls on all actors involved to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict, to fight impunity and prosecute those who perpetrated crimes of genocide, crimes against humanity and war crimes including war rape and other forms of sexual violence, as well as to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict.

UNSC Resolution 1820 (2008) concerns itself mainly with the issue of war sexual violence. It stresses that sexual violence, “when used or commissioned as a tactic of war in order to deliberately target civilians or as a part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security”. Even more concretely, it suggests steps to be taken in order to cease war sexual violence during ongoing conflicts, for instance “enforcing appropriate military disciplinary measures and upholding the principle of command responsibility, training troops on the categorical prohibition of all forms of sexual violence against civilians, debunking myths that fuel sexual violence, vetting armed and security forces to take into account past actions of rape and other forms of sexual violence, and evacuation of women and children under imminent threat of sexual violence to safety”.

Moreover, this resolution emphasizes that war rape constitutes a war crime, a crime against humanity, or a constitutive act with respect to genocide. The resolution also requests the UN Secretary-General to take all necessary measures for training and education of UN peacekeeping personnel with respect to preventing sexual violence. UN Secretary-General is also called upon to submit a report to the Security Council regarding the issue. Finally, it calls on regional and national capacity-building regarding the fight against sexual violence, and in order to assist the civilian victims of armed conflict, *including and in particular* women and children. Therefore, UNSCR 1820 addresses both men and women, but emphasizes the need for the needs of women to be fully included addressed.

UNSC Resolutions 1888 (2009) and 1960 (2010) are a follow-up of UNSCR 1820, whereas UNSC Resolution 1889 (2009) builds on UNSCR 1325 by addressing the necessity for increased participation of women during all stages of peace processes, particularly in conflict resolution, post-conflict planning and peace building. In addition, UNSCR 1888 encourages member states supported by the international community “to increase access to health care, psychosocial support, legal assistance and socio-economic reintegration services for victims of sexual violence, in particular in rural areas” and to “avoid marginalization and stigmatization of victims, to assist with their social reintegration, and to combat a culture of impunity for these crimes”.

UNSCR 1888 also establishes the UN Team of Experts on the Rule of Law and Sexual Violence in Conflict, which became fully operational in mid-May 2011. Its core team is composed of a team leader located in the Office of the Special Representative and members from the Department of Peacekeeping Operations, OHCHR and the United Nations Development Program (UNDP). The team has so far visited several countries,

among them DRC, South Sudan, Liberia, and Bosnia and Herzegovina. UNSCR 1960, for its part, requests that the Secretary-General to establish monitoring, analysis and reporting arrangements on conflict-related sexual violence.

Following that request, in January 2012, the UN Secretary General submitted a report entitled Conflict-Related Sexual Violence to the General Assembly¹⁹⁵. The report explicitly addresses Bosnia and Herzegovina, and it is valuable in several aspects. First, it makes a crucial point by moving from the concept of sexual violence strictly understood as against women towards sexual violence as a general gender issue, in particular addressing, in Paragraph 3, the issue of sexual violence against “women, men and children”. Moreover, in Paragraph 6, the Secretary General is even more specific: “Sexual violence, and the long shadow of terror and trauma it casts, disproportionately affects women and girls. However, recent information underscores that the situation of male victims and the plight of children born as a result of wartime rape require deeper examination”¹⁹⁶. Second, the report urges the member states to ensure medical, psychosocial, legal and other services for survivors, as well as reparations and redress. Finally, the same report goes on to call on the member states to address conflict-related sexual violence in the context of security sector reform initiatives and arrangements, including training and capacity-building of national security actors; measures to ensure that those who have perpetrated, commanded or condoned sexual violence are excluded from all branches of government including armed forces, police, intelligence services and national guard; and civilian oversight and control mechanisms.

The current IW research is in line with all UNSCR resolutions and reports of the Secretary General on gender, peace and security, providing concrete data and recommendations to further support their implementation.

3.4.1. Security sector reform

Gender mainstreaming in policies and the practice of the BiH security sector institutions receives increasing attention, since it is pivotal to have women involved to improve the security situation of all women in BiH. Much remains to be done in this area. In 2010/2011, the Geneva Centre for Democratic Control of Armed Forces (DCAF), together with two BiH non-governmental organizations (Women to Women and the Atlantic Initiative) conducted a broad assessment in order to establish whether gender was effectively incorporated in the security sector reform in BiH. The DCAF research identified the necessity for an increased women’s participation in security sector institutions.

Many alleged war criminals still hold positions in public institutions¹⁹⁷ which obstruct victims’ trust in and access to these institutions. With many perpetrators at large, BiH urgently needs a law on lustration, as requested by civil society and victims’ associations throughout the country. Vetting and lustration imply a thorough screening of individuals who aspire for certain public positions. Structural changes have already occurred in BiH, including the dismantling or reform of institutions whose officials were responsible for committing serious crimes during the conflict. Many institutions were reformed, some are still restructuring and new ones are emerging. As already noted in this report, a comprehensive process of lustration is one of the objectives of the BiH TJS. The Ministry of Justice is currently drafting a law on vetting and lustration, which has yet to be adopted. Several similar initiatives have already failed in the past.

¹⁹⁵ See UNSG Report to the General Assembly, A/66/657*-S/2012/33*, 13 January 2012.

¹⁹⁶ Ibid.

¹⁹⁷ See Amnesty International (2009), *supra* note 190, and UNHCR (2005), *supra* note 53.

Major vetting actions in BiH were implemented in two large scale actions: a review of police officers and in the process of hiring and reappointing judges and prosecutors. When it comes to the vetting of police officers, the United Nations Mission in Bosnia Herzegovina (UNMIBH) vetted approximately 24,000 police officers between 1999 and 2002. During the process of judicial vetting, three High Judicial and Prosecutorial Councils (one for each of Bosnia and Herzegovina, the Federation and the Republika Srpska) screened the appointments of approximately 1,000 judges and prosecutors between 2002 and 2004.¹⁹⁸ This research could not identify any specific gender criteria for such measures in the literature studied or during the interviews conducted. Vetting and lustration have had limited success and the citizens of BiH regard the results of the vetting process as unsatisfactory given that many alleged war criminals are still employed in public administration posts.¹⁹⁹ In continuation, a brief analysis of the integration of gender in police, armed forces and judiciary will be offered.

Gender integration of the police: The administrative structure of the BiH police is complex. With the adoption of the DPA in 1995, no policing competencies were created at the national level. At that time, policing was an exclusive responsibility of the entities or, in the Federation, mainly of the cantons. The creation of an autonomous Brčko District and its own police force brought about as many as 13 autonomous law enforcement agencies: one centralized police force in the RS; one federal police force in the Federation with limited competencies; ten cantonal police agencies with most policing competencies, as well as one district police force in the District of Brčko with competencies similar to those of RS.

Later, new law enforcement agencies were created at the state level: the State Border Police, court police forces in both entities, an Interpol office, and a judicial police (the SIPA or State Investigation and Protection Agency). European Police Mission in Bosnia and Herzegovina (EUPM), which was the successor or the UN's International Police Task Force (IPTF), was launched on 1 January 2003 for an initial period of three years. However, EUPM's mandate was extended until 30 June 2012, after which the mission ceased to exist. The vetting process in the police consisted of three steps: mandatory registration, pre-screening and certification. Anyone decertified was barred from serving in law enforcement anywhere in BiH.²⁰⁰ As of today, there is an unequal representation of women in all BiH police structures. There is also a need for training on gender awareness in police structures. According to DCAF (2011), women constitute only 8% of the police of FBiH, whereas in RS the percentage is even lower (6%).²⁰¹

Gender integration of the armed forces: The defence reform in BiH was equally complicated. In the years following the end of the war, BiH faced a formidable challenge of unifying two separate armed forces (fierce opponents during the war) – the condition that was quoted as a criterion for joining NATO's Partnership for Peace. Tasked with drafting a new Defence Law for the country, the Defence Reform Commission (DRC) pushed for its adoption in 2003. Unlike police reform, the defence reform is considered to have been successful, as it resulted in the creation of a joint Ministry of Defence and the Defence Law at the state level as well as a single state army. However, women are still grossly under-represented in the Armed Forces of BiH at only 6%.²⁰²

¹⁹⁸ Finci, Jakob (2004): "The Experience of Bosnia and Herzegovina". In: *Disclosing Hidden History: Lustration in the Western Balkans*. Thessaloniki.

¹⁹⁹ UNDP (2009), *supra* note 75, pp.129-135.

²⁰⁰ See Finci (2004), *supra* note 206.

²⁰¹ DCAF (2011): "Gender and Security Sector Reform in Bosnia and Herzegovina", Sarajevo, p.79.

²⁰² *Ibid*, p. 84.



In 2004, the EU launched a military operation in Bosnia and Herzegovina (BiH) - (Operation EUFOR - ALTHEA) following a NATO decision to conclude its SFOR mission. The EU deployed a robust force (EUFOR) with a mission to ensure continued compliance with the Dayton/Paris Agreement and to contribute to a safe and secure environment in BiH. The EUFOR mandate was extended until the end of November 2012. BiH has now also an established parliamentary oversight of military matters as well as a Special Rapporteur on Human Rights within the armed forces.

Gender integration of the judiciary: Judicial vetting was carried out from 2002 through 2004. The Independent Judicial Commission aimed to reduce the number of judges and make the judicial and prosecutorial services more ethnically diverse through a formal re-application and appointment process. Today, while women still remain underrepresented in the police and armed forces, they outnumber men in the judiciary: in all the judicial institutions of BiH combined, there are 59% female judges and prosecutors. However, when it comes to the ratio of female and male presidents of courts and chief prosecutors, there is an expected pattern: only 39% women hold the leading positions in judiciary, compared to 61% men.²⁰³

The international donor community has placed particular emphasis on the reform of judiciary and improving access to justice for all citizens of BiH. USAID Justice Sector Development Project II (JSDP) II²⁰⁴ supports the rule of law in BiH through: (1) strengthened judicial independence, accountability and effectiveness; (2) a better coordinated and more unified justice sector oriented towards EU accession; and (3) increased public confidence in the rule of law. The USAID JSDP II also supported the establishment of Justice Network in Bosnia and Herzegovina.²⁰⁵ This is a newly formed informal network of 63 non-governmental organizations. It supports efficiency, independence, and accountability of the judiciary system of BiH, while also providing quality information on, education, and advocating citizens' interests in the justice sector. A number of women's organizations are member of the Justice Network, in particular those offering free legal aid.

3.4.2. Education and information

Education on conflict and transitional justice is one of the pivotal elements of non-recurrence. "Pravnik" is a non-governmental organization from Bosnia and Herzegovina that works to educate on this topic by bringing law students and young lawyers together in summer schools in Sarajevo on the subject of transitional justice. There are also important projects such as "Choosing Peace Together" (CPT) by Catholic Relief Services (CRS) and Caritas BK BiH, the principal partners of IW during this present project on gender-sensitivity in TJNR. The CPT project²⁰⁶ brings together men and women of different ethnic backgrounds and war experiences. Together they are a testament to the importance of reconciliation, and offer an excellent example of public education in that field.

The CPT, which is financially supported by the United States Agency for International Development (USAID), began its implementation in January 2010, and has been implemented throughout BiH since. In April 2012, the project was extended for two more years. By working with victims' association members, the project aims to reach a group of people who are already self-identified as being more strongly affected by the war and its lasting effects than the general population, and who have not managed to find closure on their own in the years since the war ended. A particular focus is placed on youth, because the second generation often

²⁰³ Ibid, pp.86-7.

²⁰⁴ See: www.usaidjsdp.ba.

²⁰⁵ See: <http://www.mrezapravde.ba/mpbh/english/index.php>

²⁰⁶ See: www.mreza-mira.net.

feels the weight of responsibility for the suffering of their parents and may for this reason be even more opposed to reconciliation efforts.

The beneficiaries of the CPT project benefit through the realization that they share a common denominator that can connect them: they are all war victims, regardless of their ethnic background. They have realized that they can be a lot more efficient in addressing their problems if they work together and that they can help each other regardless of their geographical location and their ethnicity. Yet, the biggest strength of CPT is reflected in the coordination they have established between organizations working with victims and victims' groups. This breaks isolation and reinforces mutual learning.

There are a large number of international researchers present in BiH and studying the mechanisms of reconciliation and non-recurrence. For instance, a scientific research project "Bosnian bones, Spanish ghosts: Transition of justice and the legal shaping of memory after two modern conflicts" is currently being conducted by Goldsmiths University of London and sponsored by European Research Council.²⁰⁷ Similarly, the project of the Newcastle University and funded by the UK's Economic and Social Research Council, "Localizing International Law: Examining the Outreach Strategies of the War Crimes Chamber of the State Court of Bosnia and Herzegovina", focuses on the way in which NGOs and other civil society groups have been involved in the practice of public outreach in BiH. The project also concentrates on the previously mentioned Court Support Network in order to provide a set of insights into the mechanisms through which the legitimacy of new courts may be established, as well as into the challenges of using civil society as an instrument for fostering public participation.²⁰⁸ It can be said that generally speaking, a thorough gendered approach is lacking in these studies, which consequently also lack gender-sensitive recommendations.

Media also has an important role in education and to inform the public opinion, while they can also contribute to institutional reforms. Through its Justice Report, Balkan Investigative Reporting Network (BIRN), active since 2005, conducts thorough monitoring of war crimes trials.²⁰⁹ Justice Report is a specialist reporting agency focusing on war crimes trials taking place before local courts; development of the local legal system; and efforts to come to terms with the past. BIRN is very active in reporting on war sexual violence and broader gendered impacts of the war – such as the situation of women returnees, widows, or women involved in war crimes. Many of their articles were very innovative. For instance, their story on war sexual violence inflicted on men in BiH opened a first space for a BiH-wide discussion on the subject, winning a distinguished journalist prize.²¹⁰

3.4.3. The role of Gender Equality Agency and the two entity gender centres

As previously mentioned, BiH has the National Action Plan on the UNSC Resolution 1325 as well as a number of agencies, centres and commissions on gender equality. BiH has moreover adopted a Gender Action Plan (GAP) 2006-2010²¹¹ and a five-year financial mechanism for its' implementation (FIGAP).²¹² These instruments are aimed at increasing gender mainstreaming in all spheres of public and private life in BiH. The GAP does not consider gender in relation to processes of TJNR. The plan comprises fifteen areas: European integration; cooperation and capacity-building; macroeconomic and development strategies; gender-sensitive

²⁰⁷ See: <http://www.gold.ac.uk/csb/newsandevents/bosnianbonesspanishghosts/>, last accessed on 24 May 2012.

²⁰⁸ See: <http://research.ncl.ac.uk/lilbosnia/>, last accessed on 24 May 2012.

²⁰⁹ The organisations that systematically monitor the war crime trials are the Research and Documentation Center (RDC), Humanitarian Law Center (HLC) (Belgrade), Dokumenta (Zagreb) and Centar za mir, nenasilje i ljudska prava (Osijek), as well as some victims' associations in BiH.

²¹⁰ See "The Last Taboo", <http://www.bim.ba/en/8/10/852/?tpl=30>, last accessed on 16 June 2012.

²¹¹ See: www.arsbih.gov.ba/en/strategies/gender-action-plan-gap, last accessed on 24 May 2012.

²¹² See: <http://www.figap.ba/en/organisation/about-figap>, last accessed on 24 May 2012.



budgets; political life and decision-making; employment and labour market; social inclusion; gender-sensitive media; life-long learning; health, prevention and protection; domestic violence, GBV, harassment, sexual harassment, human trafficking; role of men; family and professional life; gender and sustainable environment; and information and communication technologies.

FIGAP also includes financial support of five projects that concern themselves with civilian victims of war, and that range from psychosocial healing as well as to support access to the labour market or the social acceptance of women with disabilities in their communities.²¹³ The projects seem rather 'scattered', both in content as well as geographically; no clear focus becomes immediately apparent. This is a missed opportunity, since the GAP, through its' financing mechanism FIGAP, could have contributed to generate new positive experiences and lessons on gender-sensitive TJRNR.

Representatives of the Gender Equality Agency and the two gender centres regularly attend meetings of the EWG drafting the Program of Assistance to Women Victims of War Rape and Other Forms of War Sexual Violence 2013-2016. The director of the Gender Equality Agency is one of the EWG's members. One of the interviewees remarked that in the cantonal commissions on gender equality, persons are often appointed without fulfilling necessary knowledge, interest and experience for the position, that the involvement of men in such bodies is not visible and that fact should definitely change.²¹⁴

²¹³ Interview with Samra Filipović-Hadžiabdić, director of Gender Equality Agency, 26 January 2012, Sarajevo, plus correspondence, 27-28 January 2012.

²¹⁴ Interview with Lana Ačkar, Sarajevo, 27 April 2012, archive of the author.

4. Victims' voices

The importance of the voices of victims cannot be overstated. They provide the first insights on the gendered need and priorities of victims of conflict-era violence. We spoke to victims from both BiH's entities (Republica Srpska and the Federation) and the Brčko District, and both rural and urban areas. Particular attention was paid to understudied areas. While the enforced disappearances of Srebrenica; the concentration camps of Prijedor; or the war rape cases of Foča, Zvornik or Višegrad are well-known due to many trials before the ICTY and the Court of BiH, there is relatively little information on disappearances, for instance, in the municipalities of Kotor Varoš, Grabovica or Banja Luka; on the war rape committed in and around Vareš and Mostar; or in the concentration camps that existed for example in Velika Kladuša, Žepče, Hadžići (Sarajevo), Bijelo Polje or even in the neighbouring Serbia (Užice). In particular, the magnitude of different war crimes in Brčko District, home to all three peoples prior to and after the war, is still largely understudied. If BiH is divided into seven regions²¹⁵ following the RDC research methodology, the regions of Podrinje, Pounje, Sarajevo and Neretva were the scene of the largest absolute numbers of civilian killings (of both sexes).

The regions of Podrinje and Pounje show a pattern²¹⁶ of civilian killings targeting primarily men (80-90% of all killed and missing civilians), while the figures from regions of Sarajevo, Neretva, Central Bosnia, Posavina and Vrbas demonstrate that between 30% and 40% of all civilians killed were women. Podrinje (Eastern Bosnia, next to river Drina) is the only region where the number of civilians outnumbers that of soldiers (60% of all killed and missing are civilians). 18% of all killed and missing civilians there were women. The municipality of Srebrenica is obviously a very special case, where 75% of all killed and missing were civilians, and 95% of all killed and missing were men, resulting in what some authors would later on refer to as 'gendercide'. Similarly, in Pounje (Northern Bosnia, next to river Una) 50% of all those killed and missing were civilians, and 15% of all killed and missing civilians were women.

In the region surrounding Sarajevo, a city under siege for four years, roughly 40% of all killed and missing were civilians, but a 37% of all killed and missing civilians were women. By the same token, in the region of Neretva (Mostar and surroundings), 15% out of all killed and missing persons were civilians, and 39% of all killed and missing civilians were women. The percentages of the killed and missing female soldiers are in all regions is less than 1%, except for Sarajevo, where the percentage amounts to just over 1%. The regions of Podrinje, Sarajevo and Pounje have the largest number of killed and missing children.

The areas selected for the case studies were therefore (names of the regions in brackets):

- FBiH - Sarajevo –Vogošća and Hadžići (Sarajevo), Mostar - Potoci, Vojno and Grabovica (Neretva), Vareš, Žepče (Central Bosnia) and Velika Kladuša (Pounje).
- Republika Srpska - Eastern Sarajevo (Sarajevo), Kotor Varoš, Banja Luka (Vrbas), Bratunac and Rogatica (Podrinje).
- Brčko District (Posavina).

²¹⁵ Pounje, Sarajevo, Neretva, Central Bosnia, Podrinje, Vrbas and Posavina

²¹⁶ All statistics: Research and Documentation Centre (RDC).

It should be noted that all three ethnic groups were at some point fighting against each other. Areas selected for the interviews were chosen to reflect the different ethnic groups. As explained earlier, the four armies involved in the conflict were all present in BiH: the Yugoslav National Army (JNA) which later on became the Army of Republika Srpska (VRS), the Army of the Republic of Bosnia and Herzegovina (ARBiH), the Croat Defence Council (HVO) as well as the army of the Autonomous Province of Western Bosnia. In some municipalities, the Bosniak ARBiH fought against the Serb VRS (Sarajevo/Eastern Sarajevo, Rogatica, Bratunac); in others, the Bosniak ARBiH and Croat HVO jointly fought against the Serb VRS (Žepče at first, Banja Luka, Kotor Varoš, Brčko); in some localities, the Bosniak ARBiH fought against the Croat HVO (Mostar and neighbouring villages, Vareš, Žepče later); and in the North-West of Bosnia, the Bosniaks fought amongst themselves when the army of Fikret Abdić split off, established the Autonomous Province of Western Bosnia, allied with the VRS and clashed with the ARBiH (Velika Kladuša). This points to the fact that in BiH there is no single conflict pattern and no agreed upon truth.

Disaggregated by the sex of the victims, the interviews reveal that survivors' needs seem surprisingly similar at first. However, there is a difference in how men and women are able to meet these needs, and the obstacles they encounter in the process, partly due to the socially acceptable roles of men and women in BiH. The interviews were conducted with 24 war victims from different parts of Bosnia and Herzegovina. Two wider victim categories were taken into consideration: victims of torture, including war sexual violence (six men and six women) and families of the missing persons (six men and six women, either widow(er)s or parents/children of the missing). In each group of six persons, there were two Bosniaks, Serbs and Croats, coming from both entities and the Brčko District, in order to maintain the ethnic, territorial and gender balance.

Interviews with victims of torture (former camp detainees and victims of war sexual violence) in selected municipalities of BiH

As this report has already argued in a more elaborate way, there is no law formally recognizing the status of former camp inmates. For the purpose of this research, twelve victims of torture, six men (two Serbs, Croats and Bosniaks) and six female (two Croats, Bosniaks and Serbs), almost all former camp inmates detained in the camps of Vojno (Bosniaks), Velika Kladuša (Bosniaks), Brčko (Bosniaks), Užice in Serbia (Bosniaks), Žepče (Croats), Potoci near Mostar (Croats), Kotor Varoš (Serbs) and Silos-Hadžići (Serbs), were interviewed. Some female interviewees were raped in camps (a female Bosniak from Vojno), while others were not detained in concentration camps but were raped in their homes or private houses instead (Croat females from Vareš and Grabovica, a Bosniak women from Sarajevo, female Serbs from Banja Luka). Victims of war sexual violence are in a peculiar situation. While the Federation recognizes them as separate category of war survivors, Republika Srpska and the Brčko District do not.

The identities and ethnicities of the interviewees will not be further specified, to maintain confidentiality. Assessing the general situation of all interviewed victims today, it can be said that most of them, men and women alike, live in poverty and, if they are young and able to work, are unemployed. In cases where they were able to prove disability, they receive disability pensions which are miserable (from 200 to 500 KM, i.e. € 100-250). After being asked how he was making ends meet, a former detainee replied: *"You tell me!"* The exception to this rule are the Croats (former veterans of war), who, as already mentioned above, are eligible to solid payments from Croatia and therefore live decent lives.

Asked whether truth matters, all victims, men and female, confirm the statement. Men, former camp inmates, insist on 'collective truths', while some women, most of whom are victims of rape, prefer to speak of their 'individual truth'. This cannot be generalized though, as several women during the interview underlined the necessity to reveal the truth about one certain ethnic group rather than only their personal stories. All interviewees link truth to justice and use the terms interchangeably as synonyms. *"Justice can be achieved only if there is truth"*, one female interviewee argues. *"Truth should not be hidden and there should be no collective guilt, for crimes were committed on all sides"*, a former male detainee adds. Both men and women have often repeated this statement.

As mentioned in section 3.1, none of the victims interviewed was in favour of a national or regional truth commission. *"I know the truth"*, a woman says, *"I don't need them to discover it for me."* A male adds: *"RECOM could have been a good idea, but then it all went downhill with specific individuals wanting to take the credit to the detriment of us victims"*. Others attribute strong bias to such bodies. *"A truth commission will say that only one group committed the crimes. That is simply not true."*

Out of the twelve interviewees, several men and not a single woman testified in court during war crimes trials. Victims of rape (all women) did not go because they felt ashamed and afraid. The men that testified in court (not on sexual violence) indicated that the process did not make them feel acknowledged or recognised by the court. *"They summoned me but have never asked whether I was feeling safe during the testimony or afterwards,"* says one man, *"And I received threats later on, but no one cared"*. Another one, who testified before an entity court, adds: *"I didn't have a clue I was entitled to ask for a reimbursement of travel costs to and from the court. No one has ever told me that."* A third witness remembers how the presumption of innocence is not always a priority before some BiH courts and prosecutor's offices: *"When I came in, the prosecutor asked me straight away how many of his people I'd killed that night. I was shocked."*

When it comes to reparations, material and immaterial, there are numerous obstacles the victims face, as already discussed in section 3.3 of this report. A case of a female war rape victim who had difficulties receiving the pension due to obstructions by an employee of a cantonal ministry, was already elaborated in section 3.3.1. Other interviewed victims of war rape have never claimed the right to compensation, for they are embarrassed to do so. Also, several male camp inmates have filed lawsuits against the entities in accordance to what was discussed in section 3.3.1, but are still waiting for the final verdicts.

All interviewees are deeply traumatized and in need of treatment. The vast majority of them does not have health insurance and have not received psychosocial support (*"I am not crazy"*, some of them say). These people were tortured in different ways, beaten up and held without food for days. With regard to nuances of cruelties and torture inflicted, gender differences come to the fore.

A male camp inmate remembers: *"One day, they beat me up really hard and threatened to rape my under-age daughter who was in the camp with me."* Another male adds: *"They would give us only a very small piece of bread a day. People were drinking their own urine in order to not die of thirst."* A rape victim tells how her past has an affect on her son: *"I was raped but luckily I didn't get pregnant. My husband and I have two sons, the younger one was born immediately after the end of the war. As the years passed, my older son, when he was something like 15, heard somewhere in the village that I was raped during the war and that my younger son was the fruit of that rape. One day, he came to me and asked whether that was true. When I denied it, he replied: Good, otherwise I would have to kill him. When your 15-year-old child tells you something like that, shouldn't you just hang yourself to get it all over with?!"*

Another woman recalls the torture she suffered in the camp: *"They were calling me names and beating me for days. One day, I woke up and I could not move. I had experienced a stroke and there was a realistic chance I would stay paralyzed, if I made it. The only person helping me at the time was a fellow inmate, a mentally retarded man who had used to live in my street and whom I knew very well. He would steal some food and water and bring it to me whenever he could."*

All these people, men and women alike, have been diagnosed PTSD but most of them cannot afford to treat it. *"During the day, everything is fine. Then, the night comes and I am suddenly petrified,"* a male camp inmate says. Some of the victims have health-problems that seem to relate to their suffering during conflict. Some of them are returnees, and most of them have successfully reclaimed their property. All camp survivors underwent similar agonies, yet: *"Each of our stories is individual and completely different from all other stories"*. Men and women both suffered immensely, but men's suffering is generally interlinked with their participation in the fighting, in case they were soldiers, while women were most often tortured simply because they were civilians and women. It are the victims of war rape that are most reluctant to break the silence about what happened to them and openly participate in processes of truth and justice. Official apologies and memorials are important, the victims agree, but are currently more of a formality used for political purposes.

Out of those interviewed, men were more likely to believe in a possibility of a new conflict than women. Yet there were also male inmates who claimed differently: *"I do not believe there will be a new war any time soon. There could be escalations of violence though. I think, if we were to take the weapons again, we would surpass Rwanda in the number of victims. The biggest threat for this society is a culture of revenge, and if there were a new conflict, the sentiments of revenge would emerge immediately."* Peacebuilding projects, stable employment and education were quoted by all victims, male and female, as the means of preventing a potential deadly conflict in the future.

Interviews with families of missing persons in selected municipalities of BiH

Since the vast majority of missing persons are male, women's organizations are very involved when it comes to the missing families' associations. In this case study, twelve members of various missing persons' associations, six male (two Serbs, Croats and Bosniaks) and six female (two Croats, Bosniaks and Serbs), from Kotor Varoš and Vogošća (Bosniaks), Eastern Sarajevo and Banja Luka (Serbs) and Vareš and Grabovica (Croats), were interviewed. All female interviewees live in poor economic conditions, while the interviewed men are better off. Some are entitled to symbolic disability pensions for civilian victims of war, and most of them are unemployed (other than volunteering in their associations).

Unlike camp inmates, the families of the missing do focus on individual truth-finding instead of collective truth-processes. This is understandable, since their main and immediate need is to know what happened to their nearest ones. *"Until I find my child, I will not rest. That search pulls me back to 1992, and I've been stuck in 1992 for 20 years now"*, one woman admits. *"My son is missing"*, a father says in a similar fashion, *"And you cannot expect me to live normally until I find out what happened to him."*

Both men and women want light to be shed on the destinies of their missing loved ones. The interviewees regarded the suffering of women that lost a husband or a child, a deeper harm than the suffering of men who lost a family-member. As two males looking for their parents state: *"It is true that women are the worst off. Whatever you may have gone through, if you put yourself in the shoes of a woman who lost three sons and a husband, you realize that you can't compare."* Another woman agrees: *"The biggest tragedy for you as a mother is that you die before finding out what has happened to your child"*. The missing persons associations do not have high expectations from a truth commission of any kind – their eyes are directed to the Missing Persons Institute whose objective is to help them in identifying the remains of their missing ones. As two women state: *"Commission? What commission? Haven't we already seen so many commissions that did nothing?"*

Like other respondents, the families of the missing persons of all ethnicities and both sexes, quote the lack of justice in BiH, as described in section 3.3.2. The state and the entities have failed to comply with the decisions of the Constitutional Court regarding the families of the missing persons. Supported by TRIAL, some individuals, mostly women, have decided to seek support at the international level. *"I have submitted a complaint before the UN Human Rights Committee. Perhaps they will acknowledge the miserable position I am in, when my own state failed to do so. The decision is expected very soon"*, says one woman. *"Yet"*, she adds, *"You know what happened, or better, what didn't happen, after the Sejdić and Finci decision."*¹ *The state has not done a thing, despite all the pressure coming from outside."*

Regardless of their ethnic affiliation, all persons interviewed are aware of the existence of the Law on Missing Persons, and the fact that it is not being implemented. It is particularly women who insist on the urgent establishment of the Fund for Missing Persons, probably as a consequence of their precarious financial situation. To date they have never received any compensation. The associations from Republika Srpska, however, argue that the Operational Team for the Missing of RS, attached to the entity government, is more efficient in assisting the families than the state-level Missing Persons Institute.

Since many interviewed persons looking for their missing family members are also IDPs, they also complained about very different state responses, depending on their place of residence. *"Coming back to RS", a woman confesses, "was extremely difficult as I lost all the rights I used to have in the Federation. RS treated me as if I had come from a completely different country."* Claiming property back in BiH seems to be a difficult undertaking for a woman. *"If you go and say you want your house back, they look at you as if you were some kind of a prostitute," a woman admits. "But I can't send my husband to go instead of me, for he's been missing for years now."*

In allocating alternative accommodation, entities often prioritize women with children. Those without children face obstacles in this respect. *"I have no address now. Do you understand? I have nowhere to live. There is someone else living in my apartment, and, since I have no children, I am not a priority. I don't know what happened to my husband, I'm still looking for his bones. I have no money, either. So, not only am I homeless, I am also alone and extremely poor,"* a woman from a rural area says. On the other hand, the single mothers with children interviewed quote the urgent need to support their children. Although the law guarantees such children a number of advantages, these have so far no materialized. A woman complains: *"My children are university students and no matter what the law says, they had no priority in enrolment. Once they finish school, I am sure they will have no employment, either. I myself cannot offer them much. I also don't work."*

Interestingly, some women from the missing persons associations mention how are they are worse off compared to what they call 'celebrity victims' from their own ethnic group. They report that the public approach to different regions is absolutely unequal. Because some cases or associations are more present in the media, they also receive more general attention from state institutions and civil society organisations?? *"That is so unfair,"* a Bosniak woman notes. *"The Bosniak mothers from Srebrenica are omnipresent, everyone knows about them",* she goes on, *"which is fine, but what about all the Bosniak mothers from other parts of BiH?"* And, as representatives of other two ethnic groups add: *"What about non-Bosniak mothers, what about the mothers of the missing Croats and Serbs? Do they deserve some attention?"* This is a clear argument in favour of the statement that, despite their significance, ethnicity and religion are not the only elements that matter in post-conflict resolution of an ethnic conflict. Gender, age and social status are equally important.

All respondents quote the importance of apologies, commemorations and memorials. *"Commemorations are the only way to remind the public and our young ones about what happened to us",* a woman emphasizes while her colleague nods. The families of the missing, and women in particular, say they do not believe that a new conflict could emerge soon. However, they add, should the state remain as dysfunctional as it is, nothing can be excluded. *"Absence of war does not equal peace",* a male victim concludes. *"Should frustrations persist, they can very easily transform in tensions, and those again in violence. Only if civil society steps in with adequate peacebuilding and reconciliation measures, and the governing authorities acknowledge these efforts, such a disaster can be avoided"*.

5. Evaluation of the meaningful participation of men and women in key TJNR processes

Up to now, we have mainly discussed the victims' needs and demands concerning TJNR from a gender perspective. A separate question concerns the assessment of the meaningful participation, or a proactive involvement, of both sexes in key TJNR processes in BiH

When it comes to **TJNR** in general, we have seen that women had no say during the conclusion of the DPA and in the process of state-building afterwards. Despite the fact that in 1998, the Provisional Election Commission of BiH adopted a rule under which 30% of candidates should be women, at the parliamentary level (be it the state or the entities) women are still massively underrepresented. In the current government, none of the ministers is female. Neither is any member of the tripartite Presidency a woman.

While women make up one-half of the Expert Working Group that drafted the Transitional Justice Strategy, and the president of the EWG is a woman, judging from the first draft of the TJS, there is still room for improvement regarding the issue of gender-sensitivity. During the consultations with victims' associations prior to the drafting of the TJS, several associations of victims of war sexual violence lobbied intensely for inclusion of this issue in the document. However, a more widespread support from CSOs was lacking.²¹⁷

In the processes related to **truth**, women's participation so far has been limited. It is difficult to assess the extent of women's involvement since all attempts of establishing a fact-finding body on a regional, national or local level, have thus far not been successful. Several local-level initiatives included, if only for a short time, several women. Thus far, there has yet to be a meaningful participation of women in the design and implementation of truth-seeking projects that are currently planned, such as the regional undertaking, RECOM, a potential national truth commission to be debated after the adoption of the Transitional Justice Strategy, or the CSO-lead Court of Women for the former Yugoslavia.

When it comes to **justice**, as mentioned in section 3.4.1, in BiH there are generally more women judges and prosecutors than men. Although women constitute a solid majority of the judiciary they rarely hold the decision-making positions, with the exception of the female president of the Court BiH. Aside from the president, the Courts in BiH also have 20 other female judges out of 54 judges in total. There is currently only one woman in the Supervisory Body for the National War Crimes Processing Strategy. The role of women is reserved for those occupations demonstrating a considerable degree of empathy. In those municipalities where a witness support office is operational under the auspices of courts and prosecutor's offices (for now: Sarajevo, Eastern Sarajevo and Banja Luka), psychologists and therapists employed are mainly women. NGOs that offer free legal aid to the victims are equally managed by women (Medica Zenica, Vive žene Tuzla, Centre for Legal Aid to Women Zenica, Udružene žene Banja Luka, Foundation for Local Democracy Sarajevo, etc.).

In the field of **reparations**, women are particularly active in drafting the Program of Assistance to Women Victims of War Rape. Sexual Violence and Torture 2013-2016. The president of the EWG (not to be mixed with the EWG that drafted the TJS) is a woman, as well as all other members of the group (including the di-

²¹⁷ Correspondence with Aleksandra Letić, Helsinki Committee Bijeljina, 25 May 2012.

rector of the state-level Gender Equality Agency). Also, women are active in drafting the Law on the Rights of Victims of Torture and Civilian Victims of War together with associations of (predominantly male) camp inmates. As repeated on several occasions in this report, the majority of CSOs active in offering psychosocial treatment, educational programs, job counselling and promoting sustainable return are managed by women.

Finally, when it comes to *the guarantees of non-recurrence*, it appears that a rather one-sided picture after the conflict in BiH has been created, whereby women are mostly seen as victims of the war, while men are mostly seen as heroes.²¹⁸ Translating that logic to the contemporary post-war society, jobs in the BiH security sector are not considered as suitable professions for women. Given the unsatisfactory childcare packages as well as various legislative provisions not sufficiently sensitive of their particular needs, women are not encouraged to take up these kinds of jobs (see Table 5). Politics is also a male sphere. Of the nine minister positions available in the state Council of Ministers, none is currently occupied by a woman. Women are rather active in education, media and research on transitional justice, as well as in peace building and reconciliations projects, as previously mentioned.

Table 5: Selected indicators of meaningful participation of both sexes in TJRNR processes in Bosnia and Herzegovina²¹⁹

	WOMEN (in %)	MEN (in %)
Ministerial positions – BiH	0	100
Ministerial positions- FBiH	5.9	94.1
Ministerial positions – RS	11.1	88.9
Parliamentary Assembly of BiH – House of Representatives	16.6	83.4
Parliamentary Assembly of BiH – House of Peoples	13.3	86.7
Parliament of FBiH	20.4	79.6
National Assembly of RS	24	76
Judiciary – all judges & prosecutors (BiH-wide)	59.23	40.77
Judiciary – presidents of courts & chief prosecutors (BiH-wide)	38.89	61.11

²¹⁸ An excellent illustration for this is a newspaper story quoted in the master thesis by Lejla Hadžiahmić, which was discussed at the beginning of this report. A widower of a late female combatant, one man is reported to have sought family-member entitlements from one of the offices of the Organization of Families of Šehids and Fallen Soldiers that were established in Sarajevo. The article suggests that one would “firstly think that there was a typing error made with his name”, for it seemed perfectly natural that he be a woman, like other widows of fallen soldiers who were members of the Organization. Since the end of the war, the man in question has not been successful in claiming his entitlements from the Organization. The argument that was offered to him is that it provides subsistence for the fallen soldiers’ families - their wives and children. The article reports that he was often told that, being a man, he had better find a job and not come there to “beg for money and steal from the mouths of the mothers and children who really need the help”. The inverted form of gender discrimination shows how the roles of men and women in the war were constructed, and the extent to which their ethnic victimhood was framed.

²¹⁹ http://www.1325.arsbih.gov.ba/?page_id=6; DCAF (2011), CIA World Factbook.

6. Conclusions and findings

The 1992-1995 war is still vividly present in BiH and in the lives of its population. Women were not expected to fight in the war, and only a small percentage of them did. Those who did faced various prejudices during and after the conflict. As this report has shown, women are victims in multiple ways: they were detained in concentration camps, where they were tortured and raped; they were widowed and became childless; they gave birth to children conceived during rape; or they were forcibly displaced and pushed into poverty. Many of them are single mothers who are today unemployed and living in rural areas. This had led to the portrayal of Bosnian women in the media as a small, humiliated, crying victims.

As this report has attempted to argue, Bosnian men, despite (or precisely because of) the social status of heroes and breadwinners, had to bear the burden of war-time violence. Over 90% of all Bosnian casualties were male; many men who were raped seem to have left BiH to escape from the social stigma; camp inmates, mostly male, are not considered victims of war and suffer from PTSD or alcoholism, often living in poverty due to unemployment. Boys formerly detained in camps have in the meantime become men, many of whom have been unable to fit in the post-war context. They feel like outsiders because they suffer from war trauma, because they see that justice has not been done, and that the state has done little for them in the aftermath of the conflict with regards to jobs, poverty reduction, etc.

War survivors, whether male or female, Bosniak, Serb or Croat, all want to know the truth, and they have the right to know it according to a number of international legal instruments. Yet in the judicial processes it are mostly the stories of men that are being told, except when it concerns sexual violence. In the various attempts to establish fact-finding mechanisms in BiH, women have so far been vastly underrepresented. They did not significantly participate in the initiatives to establish national or local truth commissions or similar bodies. Their engagement in the regional initiative, RECOM, has been overshadowed by ethnic disputes. This might be the reason why some of them, representing the CSO-sector, are now dedicated to establish a Court of Women for the former Yugoslavia. The success of this project, along with all other ones related to truth-seeking, remains to be seen. So does the extent of their gender-sensitivity.

Notably, there are 13 non-enforced decisions regarding the missing persons or their families, with 1,183 applicants in total. For instance, in the prominent case *Selimović and others vs. Republika Srpska* (The Srebrenica Cases), out of 49 applicants, the majority were women, some of them mothers of as many as three missing sons. If all domestic instances are exhausted, the families have the right to submit cases to the European Court for Human Rights (ECtHR) or the United Nations Human Rights Committee (HRC). There have been 28 such ongoing cases so far (15 before the ECtHR and 13 before the HRC). Again, in these cases majority of applicants are women. None of the cases has yet been completed.

During trials, BiH courts use several criminal codes allowing for discrepancies in sentencing: this is why victims of torture, often men, and of war sexual violence, often women, are left with the sentiment that justice has not been satisfied. Families of the missing persons, mostly women, having filed a number of lawsuits against BiH before the country's Constitutional Court, express disappointment because the decisions of the Court in their favour have never been enforced by the State. There is one crucial difference between men and women in their quest for justice. This refers to their testifying in war crimes cases. Men testify much more often than women, except when they were victims of war sexual violence. As a reason for not testify-

ing, women state the fear for themselves and their families; they mention the element of shame and social stigma (as also the men do in relation to sexual violence); they quote threats and bribery; and they sometimes also name poverty and the lack of family support for their decision to testify in war crimes cases. In this way, many women, who would otherwise offer invaluable insight into the events of 1992-1995, never set foot in courts.

To substantiate the lack of presence and access of women in courts, we give some statistics:

Since the introduction of the new BiH Criminal Code in 2003 until the end of 2011, there were 250 completed war crimes cases before all BiH courts. For the sake of comparison, the ICTY initiated 75 cases, and has so far completed 55 since it became operational in 1993. As of April 2012, there have been 31 concluded war crimes cases before the Court of BiH concerning war rape and other forms of war sexual violence. 34 individuals have been convicted for sexual violence, while 5 individuals have been acquitted. Increasingly, cases of war sexual violence are being processed at the entity level. As of mid-2011, the ICTY completed a total of 20 cases that included, among others, command responsibility for, or individual charge of, rape and other forms of sexual violence against women, but also men. In those 20 cases, 78 individuals were indicted for sexual violence and 28 were convicted. There are 20 other individuals indicted for sexual violence currently facing trial. At the Court BiH, Department I (War Crimes Chamber), in the period between May 2005 and April 2012, there were only roughly 19% female witnesses. Interestingly, women witnesses constituted almost 23% of all witnesses invited by the Prosecutors' Office, while the defence relied on the testimonies of only 10% women witnesses. This is certainly indicative of the fact that the testimonies of women, gravely affected by the conflict, often prove to be crucial for the prosecution and are at the same time perceived as an imminent threat for the defence of the alleged war criminals.

Concerning reparations, BiH does not have a reparations or a plan to have them. The existing modest payment and disability pensions are paid on the basis of social and economic status, and not as reparation for a human right that has been violated. Moreover, the national / entity legislation either does not recognize an entire category of war victims (former camp inmates); or recognizes them just in one of the entities (victims of war sexual violence). Other 'categories', like family-members of missing persons, are recognized and should receive reparations but measures and legislation to do so have never been implemented. Those who lost property generally got this property returned (mostly houses), but this measure has not been accompanied with concrete measures to guarantee sustainable return. This particularly affects single women, since they have to fight additional (socio-economic) vulnerabilities and prejudices for being a single women and head of household.

Women are particularly vulnerable in the context of all named victim categories, for besides the non-existent or very modest entitlements they receive, they are not prioritized in healthcare, social protection, employment and education. Women living in remote rural areas are especially affected by this. Former camp inmates, according to some figures approximately 200,000 of them who were detained in one of at least 657 concentration camps in BiH, do not exist as a victims' category. As previously mentioned, both entities regulate the status of war veterans and of civilian victims of war, but do not encompass the category of those who were detained and tortured in concentration camps.

A larger presence of women in the BiH security sector could contribute to better responsiveness to the needs of women and men alike. Female victims of gender-based violence tend to speak more easily to fe-

male police officers, and victims of war sexual violence talk more freely to female soldiers. In the similar vein, women open up more easily to female judges and prosecutors. While various plans exist to increase the gender-sensitivity of the security sector as well as the numerical presence of women in security institutions, in practice women are severely underrepresented in both the police or the armed forces. The judiciary is an exception, since here women outnumber men, but only in lower-level positions at courts and prosecutor's offices. Politics is an area dominated by men with little women holding seats in parliament or being appointed as ministers.

Women are particularly active in civil society, be it in CSOs dealing with therapy, assistance and legal aid to victims, or in victims' associations, academia and the media active in the field of TJNR. Better use could be made of good practice and useful experiences of these civil society initiatives. Also, BiH has an institutional setting for gender mainstreaming. It has a Gender Equality Agency as well as two entity gender centres, and it was the first country in the Balkans that adopted a National Action Plan for Implementation of UNSCR 1325. Despite these commendable steps, practical progress for women is slow, since these tools and instruments are only partially or not at all being implemented.

Out of the key TJNR strategies or pieces of legislation identified, there are three existing strategies (National War Crimes Processing Strategy; Law on Missing Persons; Revised Strategy for Implementation of Annex VII of DPA) and three being drafted (Transitional Justice Strategy of BiH; Program of Assistance to Women Victims of War Rape, Sexual Violence and Torture 2013-2016; Law on the Rights of Victims of Torture and Civilian Victims of War). Among those, the Program of Assistance to Women Victims of War Rape and Other Forms of War Sexual Violence is the only one that is partially gender-sensitive; yet even that document does not account for male victims of sexual violence. The first public draft of the TJS demonstrates a clear potential of gender-sensitivity. As elaborated extensively in the report, the document makes several references to gender in the context of truth, justice, reparations and non-recurrence. The present report also suggests other ways how to further incorporate gender-sensitivity more substantially in the TJS.

Lack of political will was often quoted the primary argument as to why certain TJNR legislation and strategies have not yet been implemented, apart from the lack of a gender-sensitive approach of TJNR measures. In a country with a complex and confusing administrative, legislative and judicial structure, this is not surprising. Nevertheless, positive examples of localizing transitional justice, such as the abovementioned Program of Assistance to Women Victims of War Rape, Sexual Violence and Torture 2013-2016, local reconciliation projects for men and women such as Choosing Peace Together (implemented by Catholic Relief Services and Caritas BC BiH), or tremendous and formidable work of several CSOs specializing in post-war healing and therapy for different war victims' categories, demonstrate a clear potential of BiH to implement a bottom-up, gender-sensitive TJNR.

7. Recommendations

General note: Much has been said by various actors on how to improve and promote gender-sensitive TJNR processes. Some of our recommendations are not new, but reconfirm existing recommendations. They have been highlighted again in order to press for an integral approach to TJNR processes and mechanisms, bring about structural institutional reform and enforce victims as rights holders. Other recommendations are novel, as they try to encompass various victims' categories, both men and women. Although we make separate recommendations for truth, justice, reparations and non-recurrence aspects, we also underline the need for an integral approach of TJNR processes and mechanisms.

GENERAL

Council of Ministers & Parliament of Bosnia and Herzegovina (BiH):

- Adopt the Transitional Justice Strategy, for the strategy encompasses the elements of truth seeking, reparations and institutional reforms needed to address the lack of gender sensitive TJNR efforts and the differing needs of male and female war victims in BiH.

Expert Working Group for the Transitional Justice Strategy:

- Ensure that a gender-sensitive perspective is integrated in the content of the Strategy in the following ways:
 - A) Going beyond the notion of wartime sexual violence, elaborate on the ways to integrate women's experiences in both non-court truth seeking mechanisms and the existing mechanisms for search of the missing persons. Reflect on how all women victims of war, including those living in rural areas, heading poor households and living with stigma, can best be included in truth seeking processes in BiH. Also, look at both men and women's roles when discussing issues surrounding gender and truth. Acknowledge that men and women's needs are treated with unequal attention in the BiH society and look for potential ways of equalizing their access to truth.
 - B) In the area of reparations, elaborate more extensively on how rehabilitation programs in BiH should be rendered gender-sensitive. In particular, complement the first draft of the Strategy by suggesting efficient employment measures for war victims of both sexes, taking particular note of the high unemployment of women victims of war. Also, analyze the existing BiH system of war-related payments by putting in question its currently purely welfare-oriented, and not reparative, character. Take into account the poor economic and social situation of former camp detainees, still one of BiH's most vulnerable social groups, as well as victims of war rape and the families of the missing persons.
 - C) In the field of institutional reforms, promote a comprehensive vetting of public officials, addressing the alarming fact that victims of war, notably women, still encounter, on a daily basis and in various public institutions, the persons responsible for the harm inflicted on them.

State and entity authorities:

- Assisted by the Gender Equality Agency, the entity gender centers and the Ministry of Justice BiH, offer extensive and comprehensive education on the integration of a gender perspective in TJNR processes and institutions for all employees working in TJNR (judiciary, security sector, public administration, social welfare), as well as carry out institutional gender mainstreaming;

- Enhance equal participation of men and women in all Expert Working Groups (EWGs) / supervisory bodies concerning the relevant TJNR processes and documents by appointing more women and gender experts, and ensure the equal participation of men and women in the EWGs;
- Involve the voices of victims of war time sexual violence in the drafting of the new Gender Action Plan (2012-2017) and ensure the implementation of the programs targeting the socio-economic situation of the victims.
- Encourage civil society participation in relevant TJNR processes, in particular related to integrating a gender-sensitive approach in the latter (such as the Program for Assistance to Women Victims of War Rape, Other Forms of Sexual Violence and Torture 2013-2016);
- Continue providing sufficient funding and support for the implementation of the National Action Plan on UNSCR 1325.

Civil society and media:

- Combat gender-based stereotypes that create a ground for gender-based discrimination by fighting the victimization of women within the BiH society and promoting their equal participation in TJNR processes;
- Make use of the watchdog function CSOs have in order to monitor the state-wide implementation of the NAP of the UNSCR 1325.

International donor agencies:

- Pay particular attention to the implementation of NAP 1325 in BiH within the processes of TJNR and support it to the extent possible with relevant technical expertise and financial means.

GENDER-SENSITIVE TRUTH

State-level Ministry of Human Rights and Refugees and Ministry of Justice:

- Given the numerous failed attempts of establishing a truth and reconciliation commission in Bosnia, organize a comprehensive public discussion on what elements of such a commission the country really needs and unlike the previous initiatives, include the local-level victims' associations and civil society in the process, paying attention to the needs and demands of both men and women war survivors. This discussion could take place during the upcoming public campaign on the Transitional Justice Strategy.

Institute of the Missing Persons:

- Establish a gender-disaggregated database on the missing persons (CEN), and publish a rulebook on what information will be publicly accessible. This in order to facilitate the search process for the families of the missing, as well as to provide access to relevant statistics for all interested individuals, institutions and organizations.

Civil society involved in the RECOM process and potential RECOM member states:

- Take into account different attitudes of BiH victims' associations towards RECOM, notably the hesitance coming from many women victims of war time rape, in order to ensure a gender-sensitive fact-finding process and account for massive human rights' violations committed against both men and women of BiH;

- Promote gender-sensitive approach of RECOM during the campaign and should RECOM be formed, respect Articles 24 and 27 of RECOM statute in order to ensure gender equality of commissioners and national selection boards.

Civil society, notably women's organizations, involved in the process around the Court of Women for the Former Yugoslavia:

- Look for synergies with existing initiatives such as the Transitional Justice Strategy and the Coalition for RECOM.
- Making sure that Court, should it take place, is a distinct initiative dedicated to collecting stories of women's suffering, but also a complementary process to the existing undertakings and filling the gaps of potential state-endorsed fact-finding bodies;
- Define the critical points that distinguish the Court from other similar truth-seeking and -telling projects (for instance, that the Court is dedicated solely to women and unlike RECOM, it is meant to be a process rather than a body or an organization), and insist on these points during the upcoming campaign for the Court of Women.

GENDER-SENSITIVE JUSTICE

Council of Ministers & Parliament of BiH:

Amend the BiH Criminal Code regarding the following in order to bring it in harmony with international standards:

- Torture: introduce the codification of torture in the criminal codes of the entities and the Brčko District;
- Wartime sexual violence: in Article 173 of the BiH Criminal Code, do not insist on the 'use of force' in order to define sexual violence; do not insist on 'extensive proof of the act of sexual violence by witness testimonies'; establish the obligation to follow Article 198 of the Criminal Procedure Code whereby the victim compensation is ordered by the courts and not directed to the individual civil litigation processes;
- Enforced disappearance: due to the fact that many persons, notably men, have disappeared during isolated attacks and lootings, include the definition of enforced disappearance as an autonomous instance, thereby accounting for the acts of enforced disappearance committed in isolated cases that currently do not fall under the category of a widespread or systematic attack in Article 172 of the BiH Criminal Code;
- Witness protection; amend the Criminal Procedure Code of BiH as well as the Law on Endangered Witnesses of BiH, since both of them allow that the defense be provided with the **names of witnesses** prior to the trial revealing witnesses' identity and thus threatening their vulnerable position; amend the Law on Witness Protection Program in Bosnia and Herzegovina so it can include adequate witness protection at the entity, cantonal and district level, notably for gender-sensitive crimes such as sexual violence, and include the State Investigation and Protection Agency's (SIPA) services of physical protection for the entity-level investigations of war crimes.

Entity authorities:

- Enforce the rights delivered by the Constitutional Court of BiH in favour of the families of the missing persons, notably women, mothers and spouses of the missing. Notably, these rights are the right to family life (Article 8 ECHR); the right of family members not to be submitted to inhuman or degrading

treatment or punishment (Article 3 ECHR); prohibition of discrimination (Article 14 ECHR) and the right to an effective remedy (Article ECHR 13):

- Put in place mechanisms for internal evaluation, assessment, control and disciplinary systems, as well as better mechanisms of personnel appointment with regard to gender sensitivity.

The High Judicial and Prosecutorial Council (HJCP):

- Train HJCP on gender sensitivity and monitor the implementation of the corresponding programs;
- Encourage the employment of women at high-level decision-making posts in the judiciary by introducing quota systems and conducting widespread lobbying activities;
- Give priority to and accelerate the processing of war time acts of sexual violence by tasking more judges and prosecutors to deal exclusively with these types of war crimes.

Courts and prosecutors' offices in BiH:

- In accordance with UNSCR 1325 (2000), fight impunity and prosecute those who perpetrated crimes of genocide, crimes against humanity and war crimes including war rape and other forms of sexual violence.
- Accelerate the implementation of the National War Crimes Processing Strategy and ensure the efficient processing of all war crimes trials related to wartime and post conflict cases of gender-based violence.
- Inform victims of sexual violence that, once final verdicts have been established, they can claim individual compensation from the courts.

Court of BiH, Prosecutor's Office of BiH:

- Integrate a gender-sensitive approach into witness protection programs, notably by maintaining a gender-disaggregated database on the number of witnesses, protected witnesses and wartime and post conflict sexual violence cases, by seriously identifying and considering the particular risks women face when testifying and by establishing relevant protection measures;
- Elaborate a psychosocial approach to deal with the witnesses/victims of wartime and post conflict sexual violence (both men and women), taking into account the gravity and the sensitive nature of the crimes committed and the level of readiness of victims to talk about these crimes.

Lower-level courts and prosecutor's offices:

- Maintain gender-disaggregated databases on the number of witnesses, protected witnesses and wartime and post conflict sexual violence cases;
- Expand the number of witness support offices so they are existent everywhere in BiH and available to all victims and witness without gender discrimination;
- Elaborate psychosocial support for the witnesses/victims of wartime and post conflict sexual violence (both men and women), taking into account the sensitivity of the crimes committed and the level of readiness of victims to talk about these crimes;
- Do not insist on special neuropsychiatric assessments in order to determine the level of protection needed for the witnesses; this due to the considerable delays in trials and high costs that occur as a consequence of such assessments;

- Introduce measures of physical protection of witnesses, notably women, in particular making use of the services and capacities of SIPA and introducing the possibility of testifying via video-link, voice and face distortion, pseudonyms, etc.

International donors:

- Ensure sufficient allocation of resources for wartime crimes processing at all administrative and judicial levels in BiH, in particular for adequate, gender-sensitive witness protection programs in war crimes trials.

Civil society and media:

- In the process of monitoring war crimes trials, place special emphasis on the need for a gender analysis in the area of witness protection in all trials, and in particular in cases related to wartime sexual violence.

GENDER-SENSITIVE REPARATIONS

All relevant stakeholders:

- In line with UNSCR 1888 (2008), increase access to health care, psychosocial support, legal assistance and socio-economic reintegration services for victims of sexual violence, in particular in rural areas, and avoid marginalization and stigmatization of victims, to assist with their social reintegration, and to combat a culture of impunity for these crimes;
- Encourage NGOs active in tackling the post-war problems which are not properly addressed by the state, such as offering psychosocial treatment to victims and witnesses in war crimes trials, running rehabilitation and reintegration programs for victims of torture, organizing various education and labor market reinsertion programs, managing safe houses for the victims of domestic violence, offering free legal aid services, and running reconciliation and dealing with the past projects;
- However, acknowledge that reparations are a primordial responsibility of the state to protect and serve its citizens and that NGOs are not a substitute for the state.

Council of Ministers:

- Harmonize the national reparation scheme according to the different needs of the victims, notably taking into account the existing discrepancy in status-related criteria between civilian victims of war (often women) and the former war veterans (mostly men);
- Amend the ongoing legislation regulation with regards to the war-related payment scheme in BiH, which at this moment is not in accordance with international law. Eligibility to war related payments in BiH is currently not based on a right being violated, but on the disability level and/or income;
- With regard to victims of torture and former camp inmates, adopt at the state level, the Law on Rights of Victims of Torture and Civilian Victims of War, in order to regulate the issue of court compensations to the former detainees, be it men or women, and establish a single per day compensation rate applicable before all courts throughout BiH;
- Assess the psychosocial conditions and needs of the former camp detainees, both male and female, as well as the set up of a reparation fund for camp inmates;
- With regard to victims of wartime and post conflict sexual violence, adopt, at the state level, the Program for Assistance to Victims of War Rape, Sexual Violence and Torture 2013-2016;

- With regard to families of missing persons: implement the Law on Missing Persons, including the establishment of the Fund for the Missing; amend the Law so it will prioritize employment and education for spouses (mostly women) of the missing, and not only their children;
- With regard to returnees: in implementing the Revised Strategy for Implementation of Annex VII of DPA, encourage sustainable return of both men and women, including property restitution, labor reintegration, education and healthcare;
- Adopt, on the state level, the Law on Free Legal Aid, so as to enable adequate legal counseling for all victims of war, men and women, and particularly those who live in rural and remote areas.

Entity authorities:

- In RS, harmonize entity legislation on civilian victims of war in order to regulate the status of victims of wartime rape and other forms of sexual violence by making them eligible for reparations as a separate victim category;
- Investigate and prosecute all cases where individual employees of public institutions abuse power by revoking the right to reparations of women victims of sexual violence;
- Amend relevant legislation so as to stop discriminating against returnees from another entity by depriving them, the female returnees in particular, from essential rights to employment, healthcare and social protection;
- Work also within communities on the issue of returnee integration, and particularly on the sustainable return including the provision of healthcare, education and integration of women returnees in the labor market.

Civil society:

- Continue offering specialized reparation services for the victims not currently offered by the state, such as psychosocial, legal and economic counseling and aid, and at the same time lobby the state for upholding its responsibility for protection and care of its citizens;
- Even in case of an exclusively a women's organization, provide counseling and psychosocial services to men as well;
- Insist on capacity-building of victims' associations by including them in NGO Networks, such as Justice Network or Network for Building Peace;
- Push for signature of the relevant protocols related to the Program for Assistance to Victims of War Rape, Other Forms of Sexual Violence and Torture 2013-2016.

GENDER-SENSITIVE NON-RECURRENCE

Council of Ministers:

- Draft, present, adopt, implement and monitor a gender-sensitive state-level vetting, in particular related to the public servants in BiH institutions;
- Consider amending the legal provision regarding the current quota of 30% women elected at both the national and local level, by ensuring that it is respected in the actual appointment of executive and legislative governments, and not only in placing candidates on the lists.

State and entity authorities and international donors:

- With respect to combating post-war gender-based violence, allocate permanent funds in entity-level budgets for safe houses of victims;
- Include a gender perspective in future domestic and international (research) projects on TJRNR processes.

Security sector institutions of BiH and the entities:

- In line with UNSCRs 1325 (2000) & 1889 (2008), ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict by introducing a target quota similar to that used by the Election Law;
- In line with UNSCR 1820 (2008), enforce appropriate military disciplinary measures and upholding the principle of command responsibility; train troops on the categorical prohibition of all forms of sexual violence against civilians; debunk myths that fuel sexual violence; and conduct vetting of armed and security forces to take into account past and present actions of rape and other forms of sexual violence;
- Increase and improve education of police and armed forces on gender-based violence.

Gender Agency of BiH, entity gender centres, as well as all relevant stakeholders (including civil society):

- The Gender Agency and the Entity Gender Centres should expand their involvement in processes related to TJRNR, since this would likely improve the gender-sensitivity of these processes.
- Continue supporting the implementation of the national Action Plan (NAP) on the UN Security Council Resolution 1325, amongst others by providing financial and administrative support for the relevant CSO projects dealing with war male and female survivors;
- Promote public awareness-raising and public campaigns on the fight against gender-based violence addressing both men and women;
- Increase the number of men involved, particularly in the Entity Gender Centers, and particularly at the cantonal level, to ensure a gender-balance and combat the belief that gender-sensitivity is only about women;
- Continue the support of CSO projects that focus on reconciliation, capacity building of victims' associations, as well as trauma healing. These projects should be coherent and dedicated to victims of both sexes, and incorporate a gender-sensitive approach.

Annex I – Glossary of Key terms

Gender	The socially constructed roles of, relationships between, and responsibilities of men and women. These determine men and women's access to power and resources – be they public or private, material or immaterial. Characteristics of masculinity and femininity differ per time and place and depend on culture, class, nationality, and ethnicity – hence gender experts often talk about masculinities and femininities.
Gender-sensitive	To pay attention and be responsive to similarities and differences in the roles of, and relationships, inequalities and differences <i>between</i> women and men, as well as <i>among</i> women and men (along other axes of identity).
TJRNR processes	Processes related to victims' right to know, justice, reparations and guarantees of non-recurrence.
Gender-sensitive TJRNR processes:	A gender-sensitive approach to truth, justice, reparation and non-recurrence (TJRNR) processes pays attention to the roles of, and relationships, inequalities and differences between women and men as well as among women and men (taking into account for example different age categories, socio-economic background, and other axes of identity) in a particular context, including through integrating their specific concerns and experiences in the design and implementation of TJRNR-related actions; ensuring more equal participation of men and women in these processes, both at the quantitative and qualitative level; treating men and women as heterogeneous groups; and analysing (the construction of) gender identities (including their evolution during and after conflict) in a specific context to transform gender roles and tackle root causes of GBV - this with the ultimate goal of ensuring that women and men benefit equally from the TJRNR-related efforts and to build a more inclusive society.
(Local) civil society	Civil society refers to the arena of un-coerced collective action around shared interests, purposes and values; commonly embraces a diversity of spaces, actors and institutional forms, including registered charities, non-governmental organisations, community groups, women's organisations, faith-based organisations, etc. When referring to 'local civil society' IW means CSOs originating from the country under study.
Victim/survivor's needs and ideas in relation to TJRNR processes	The needs-and-ideas phrase is used to refer to a plurality of issues: ➤ victims/survivors' self-indicated needs or requirements in the post-conflict context (e.g. prioritisation of schooling-for-children/housing/employment) ➤ (self-indicated thoughts on own) rights and rights' violations, and order of those violations ➤ self-indicated ideas or thoughts around TJ (e.g. perception of 'justice', thoughts on what is needed to deal with the past) ➤ self-indicated prioritisation of TJ issues (e.g. killings / disappearances / rape) ➤ self-indicated prioritisation of TJ efforts (e.g. what TJ mechanisms are seen as key or most needed, who's TJ efforts are seen as key or most needed) ➤ self-indicated benefit from TJ efforts (e.g. did TJ efforts positively affect the life of victims/survivors) ➤ self-indicated concerns, fears and doubts around TJ efforts ➤ self-indicated ideas around gender balance in TJ efforts (e.g. participation of women) ➤ (self-indicated) protection needs in relation to TJ

Annex II – Mapping of relevant actors and institutions in the field of TJNR in Bosnia

A. Official TJNR stakeholders

Ministry of Justice of BiH was established in 2003. It is responsible for administrative functions pertaining to: judicial institutions at the state level; International and inter-entity judicial cooperation (mutual legal assistance and contacts with international tribunals); ensuring that legislation and implementation by BiH at all levels is in compliance with the obligations of BiH deriving from international agreements; etc.

Court of BiH is located in Sarajevo. It has a hybrid character (international and national appointed judges and prosecutors) and the goal is to become national and to rely only on the state budget (which is currently not the case). It was established in 2000. There are three Divisions within the Court of BiH: Criminal, Administrative and Appellate. The Criminal Division contains: Section I – War Crimes Chamber; Section II – Organized Crime, Economic Crime and Corruption and Section III – General Crime. In order to prosecute “highly sensitive” war crimes on the national level, the War Crimes Chamber (WCC) was established in March 2005 within the Prosecutor’s Office of Bosnia and Herzegovina which prosecutes war crime cases. Cases are heard on the request of any court of Bosnia’s two entities or Brčko District.

The authority of **Ministry of Human Rights and Refugees in BiH** is to monitor and implement the promotion and protection of personal and collective human rights and freedoms; coordination and reporting to domestic bodies and institutions and international organizations about implementation of obligations stemming out of international conventions and international documents.

Federal Ministry for Issues of Veterans and Disabled Veterans of the Defensive-Liberation War executes the administrative, professional and other tasks related to: setting out of a uniform policy and preparing of system regulations which set out the fundamental welfare-status issues of disabled veterans, families of the killed soldiers and unemployed veterans, veterans of other liberation wars, members of the liberation movements and military disabled persons.

Federal Ministry of Labour and Social Policy has a Department for the Protection of the Disabled and of Civilian War Victims, and Sector for Social Welfare in its composition relevant for war-related payments in the Federation. This Ministry deals with labour and employment policies; labour relations and rights arising from labour relations; industrial protection/safety; pension and disability insurance, international conventions according to the BiH Constitution Law; agreements and bilateral covenants in area of employment; social welfare and solidarity, welfare of the civil victims of the war; family welfare, children adoption and custody; social protection and other tasks as set out by the relevant legislation.

In RS, **Ministry of Labour and the Protection of Veterans and the Disabled** deals with employment, pensions, protection of the veterans, war and peacetime disabled soldiers, and of the families of killed or died soldiers (and disabled ones), maintaining monuments and memorials and graves of the soldiers etc.

Gender Equality Agency of BiH was established in 2004 and embedded in the Ministry of Human Rights and Refugees, is a body at the state level. Gender Centre FBiH and Gender Centre RS are corresponding bodies at the entity levels. The Government of the Federation of Bosnia and Herzegovina, has established the Gender

Centre of the Federation of Bosnia and Herzegovina within the Ministry for social issues, displaced persons and refugees, in January 2001. Centre for Gender Equity and Equality (Gender Centre RS) was founded by the Decision of the RS Government in the end of year 2001 as a separate Centre. The BiH Gender Coordination Board (GCB) is composed of 3 directors of the BiH gender institutional mechanisms namely: the Agency for Gender Equality at state level and two entity Gender centres.

B. International organizations

Office of the High Representative (OHR) is an *ad hoc* international institution responsible for overseeing implementation of civilian aspects of the accord ending the war in Bosnia and Herzegovina. It is an international administration established by the UN to facilitate the transition to democracy and integrate the rebuilding efforts of local authorities, CSOs, and international organizations. The OHR closely monitors domestic war crimes trials to ensure that legal procedures are in compliance with the 1996 Rome Agreement ("Rules of the Road"). It also facilitates links with the ICTY, assesses cooperation of the local authorities with the ICTY; makes recommendations on the draft law on cooperation with the ICTY; and ensures political and logistic support for three BiH Liaison Officers to the ICTY from the Bosniak, Croat and Serb communities.

Delegation of the European Union to Bosnia and Herzegovina was established on 10 July 1996, then as the Delegation of the European Commission. Upon entry to force of the Treaty of Lisbon on 1 December 2009, it changed its name to the Delegation of the European Union to Bosnia and Herzegovina. The European Union Special Representative is the lynchpin in the European Union's presence in Bosnia and Herzegovina ensuring a coordinated and coherent EU approach to building self-sustaining peace and stability by assisting the country move beyond peace implementation towards European integration. The EU Special Representative (EUSR) reports to the Council of the European Union, the inter-governmental body representing the 27 EU member states, through the High Representative for the Common Foreign and Security Policy and Secretary-General of the Council.

Organization for Security and Co-operation in Europe (OSCE) Mission to BiH works in several key areas: promoting free, fair and democratic elections; promoting development of democratic, participatory and self-sustaining institutions at all levels of government; monitor human rights and fundamental freedoms and support development of sustainable human rights institutions; assisting BiH to comply with its OSCE political-military commitments. OSCE is active in researching and enhancing human rights and judicial institutions. It is one of the main supporters of implementation of National War Crimes Processing Strategy in BiH and publishes on impunity and judicial obstacles.

United Nations Development Program (UNDP) is UN's global development network active in achieving Millennium Development Goals, including the goal of cutting poverty in half by 2015. In BiH UNDP has several focuses: Democratic Governance (Focus: Public Administration, E-governance and ICT, justice and human rights). Social Inclusion (Focus: Pro-Poor policies, Gender, local governance, local poverty reduction); Human security (Focus: Mine action, SALW and ammunition Control; HIV/AIDS and Tuberculosis) and Environment (Focus: Climate Change, Biodiversity Preservation). Its major projects are relevant for the Mapping is "Access to Justice" (which also includes Transitional Justice Strategy project). Concerning gender, they also have a significant position as the main supporter for gender state mechanism and local organizations for achieving gender equality and implementation of the national Gender Action Plan.

United Nations Population Fund (UNFPA) has been providing support to Bosnia & Herzegovina (BiH) since 1995. UNFPA has funded a number of projects in support of development efforts in the area of reproductive health (RH), gender based violence (GBV) and population and development strategies (PDS) in BiH. In particular, UNFPA is co-drafting (together with the BiH Ministry for Human Rights and Refugees) a Program for Assistance to Women Victims of War Sexual Violence and will be very active in its implementation and promotion.

International Criminal Tribunal for Former Yugoslavia's (ICTY) Outreach is a modern and robust body of the ICTY, with the specialist knowledge required to fulfil the Tribunal's mandate of contributing to peace and security in the region. Its mission is to put into practice the principle of open justice.

International Commission for the Missing Persons (ICMP) aims to ensure the cooperation of governments in locating and identifying those who have disappeared during armed conflict or as a result of human rights violations. ICMP also supports the work of other organizations.

C. Civil society organizations

Women's organizations

Medica (Zenica) is an organization that offers psychosocial and medical support (and shelter) to women and children victims of war, victims of war rape and sexual violence, victims of domestic violence and victims of sex trafficking.

Viva žene (Tuzla) is an association of citizens that deals extensively with rape and other abuses against women during the war.

Association of Women of Prijedor Izvor (Prijedor) aims gather families of missing ones, to support and educate women, single mothers and to advocate for human rights.

TPO Foundation (Sarajevo) aims to contribute to the development of democratic civil society, increased awareness on gender equality, establishment of partnership ethics and promotion of accountability and responsibility in family, society and political life in BiH.

Victims' associations

Woman Victim of War (Sarajevo) is one of the most important organizations that deals with rape victims, women, but since recently, also men.

Women of Srebrenica (office in Tuzla) is an association with the vision of that all the responsible for war crimes committed in Srebrenica need to be brought before the Court and sentenced. This association cooperates with similar associations such as Mothers of Srebrenica and Zepa enclave or Mothers from Srebrenica and Podrinje – Vogošća.

Association of Camp Detainees of BiH (Sarajevo) counts approximately 55.000 members. It has its own Centre for research and documentation (CID). The member of this association is The Association of Concentration Camp Torture Survivors Canton Sarajevo – SULKS which has women's section. Although mainly Bosniak in membership, it includes also Croats and a few Serbs. Croats and Serbs have their own associations at the

entity and cantonal levels, too (for instance, Croats: in Mostar, Serbs: in Višegrad, etc.). Camp inmates from Brčko District were also involved.

Various local (municipal/cantonal) **associations of the families of the missing persons** operate for instance in Bijeljina or Eastern Sarajevo (Serbs), Vogošća or Travnik (Bosniaks), or Mostar or Bugojno (Croats).

Peace building and human rights organizations

Catholic Relief Services (CRS) carries out the commitment of the Bishops of the United States to assist the poor and vulnerable overseas, together with its local partner CARITAS BiH. Jointly, these two organizations manage the **BiH Network for Building Peace**, a network of currently 92 organizations that promote reconciliations, the principles of transitional justice, gender equality and peaceful coexistence in BiH.

Foundation for Local Democracy (FLD) is an NGO dealing with, above all, issues of trafficking and sexual violence.

Research and Documentation Centre (RDC) is an independent and professional institution which researches and collects documents, facts and information on genocide, war crimes and all forms of human rights.

Association for Democratic Initiatives (ADI) is a non-governmental organization working on political and economic development, the rule of law, protection of human rights, and EU integrations in Bosnia and Herzegovina.

Helsinki Committee for Human Rights in RS with the office in Bijeljina, in cooperation with the Nansen Dialogue Centre from Banja Luka they organize TV programs on the local stations on main topics on transitional justice.

Track Impunity Always (TRIAL) is a Swiss association that defends the interests of the victims before Swiss tribunals, international human rights organisms and the International Criminal Court and raises awareness among the authorities and the general public regarding the necessity of an efficient national and international justice system for the prosecution of international crimes.

Balkan Investigative Reporting Network (BIRN) was established on a non-profit, philanthropic basis to support the development of high quality media and civil society in BiH, and thereby to contribute to the development of a citizenry fully active in the governance of its country and in securing and exercising its democratic rights and obligations.

ACIPS is a non-governmental association of experts in the fields of EU integration processes, democracy, human rights, state management and humanitarian affairs, gender studies and religious studies. Currently it has a team working on the project „Introduction of Gender Trial Monitoring for Wartime Sexual Violence Cases at the Court of BiH“.

Annex III- List of Interviewees

Sarajevo

- Ministry of Justice, 28 November 2011
- United Nations Development Program (UNDP), 30 November 2011
- Goran Šimić, Federal Ministry of Justice, 2 December 2011
- Nela Porobić-Isaković, United Nations Population Fund (UNFPA), 16 January 2012
- Almir Alić, ICTY, 16 January 2012
- Ana Vuković, Gender Center of the Federation BiH, 17 January 2012
- Aleksandra Miletić-Šantić, European Union Police Mission (EUPM), 17 January 2012
- Mirsad Tokača, Research and Documentation Center (RDC), 17 January 2012
- Edita Pršić, NGO Foundation for Local Democracy (FLD), 18 January 2012
- Adisa Zahiragić, Association of Women Judges of BiH, 18 January 2012
- Selma Korjenić, TRIAL Switzerland, 19 January 2012
- Organization for Security and Cooperation in Europe (OSCE), 19 January 2012
- Viktorija Ružičić-Tokić, International Commission for the Missing Persons (ICMP), 20 January 2012
- Anisa Sućeska Vekić, Balkan Investigative Reporting Network (BIRN), 20 January 2012
- Samra Filipović Hadžiabdić, Gender Equality Agency of BiH, 26 January 2012
- UN Women, 27 January 2012
- Minka Kreho, Judge, Court BiH, 27 January 2012
- Goran Bubalo (CRS) and Suzana Božić (Caritas BC BiH), 27 January 2012
- European Union Special Representative (EUSR) Delegation to BiH, 21 February 2012
- Midhat Izmirlija, University of Sarajevo, Faculty of Law, 21 February 2012
- Ankica Tomić, Ministry of Security, 27 February 2012
- Sabiha Haskić, Medica Zenica, 3 March 2012
- Edina Djurković, RECOM, 13 March 2012
- Lana Ačkar, Association "Lawyer," 14 March 2012
- Murat Tahirović, former president, Association of Camp Detainees of BiH, 17 April 2012
- Senad Jusufbegović, officer, Association of Camp Detainees of BiH, 27 April 2012
- Mirjana Simanić and Milka Kokot, members, Union of the Missing and Imprisoned Persons of Eastern Sarajevo, Republika Srpska, 27 April 2012
- Bakira Hasečić, NGO Woman Victim of War, 27 April 2012
- Milada Hodžić, NGO Association of Prijedor Women Source, 27 April 2012
- Nuna Zvizdić, NGO Women to Women, 7 May 2012
- Sunita Dautbegović, academic, 7 May 2012
- Lejla Hadžimešić, academic, 8 May 2012
- Alma Taso, Witness Support Office, Court of BiH, 11 May 2012
- Ruzmira Gaco, Ministry for Human Rights and Refugees, 11 May 2012
- Elma Demir, NGO Association for Democratic Initiatives (ADI), 20 May 2012
- Branka Antić Štauber, NGO Snaga žene Tuzla, 25 June 2012

Tuzla

- Suzdina Bijedić, officer, Vive žene Tuzla, 23 March 2012
- Victims from Vogošća, Hadžići, Vareš, Žepče, Velika Kladuša, Eastern Sarajevo, Bratunac and Rogatica, as well as Brčko District (Posavina), 23 March 2012.

Bijeljina

- Aleksandra Letić, officer, Helsinki Committee of RS, 5 May 2012

Banja Luka

- Aleksandra Petrić, NGO United Women Banja Luka, 28 May 2012
- Nedeljko Mitrović, president, Association of the Families of the Missing Persons of RS, 28 May 2012
- Victims from Kotor Varoš and Banja Luka, 28 May 2012.

Mostar

- Saja Ćorić, Association of Camp Inmates of the Vojno Camp Sumejja Gerc, 17 May 2012
- Victims from Potoci , 31 January 2012
- Victims from Grabovica, 28 May 2012

Bibliography

- Amnesty International (2003) "Bosnia and Herzegovina: Honouring the ghosts: Confronting impunity for "disappearances". Available at: <http://www.amnesty.org/en/library/asset/EUR63/004/2003/en/140df5c5-d744-11dd-b024-21932cd2170d/eur630042003en.html> (Accessed on 07.09.2010).
- Amnesty International (2009) "Whose Justice? The Women Of Bosnia And Herzegovina Are Still Waiting." Available at <http://www.amnesty.org/en/library/asset/EUR63/006/2009/en/8af5ed43-5094-48c9-bfab-1277b5132faf/eur630062009eng.pdf> [Accessed on 17.07.2010].
- Arnaut, Srđan (2011) "Komisija za raseljena lica i izbjeglice (CRPC)", [Commission for Real Property Claims (CRPC)] Foundation Public Law Center, Sarajevo.
- Campbell, Kirsten (2007) "The Gender of Transitional Justice: Law, Sexual Violence and the International Criminal Tribunal for the Former Yugoslavia", The International Journal of Transitional Justice Vol. 1, pp.411–432.
- Cano, Ignacio and Galvao Ferreira, Patricia (2006): "The Reparations Program in Brazil". In: The Handbook of Reparations, ed. Pablo de Greiff (Oxford: Oxford University Press, 2006).
- Chinkin, Christine and Paradine, Kate (2001) "Vision and Reality: Democracy and Citizenship of Women in the Dayton Peace Accords," Yale Journal of International Law 26, pp 103–178.
- Colonomos, Ariel and Armstrong, Andrea (2006): "German Reparations to the Jews after World War II: A Turning Point in the History of Reparations." In The Handbook of Reparations, ed. Pablo de Greiff (Oxford: Oxford University Press, 2006).
- DCAF (2011) "Gender and Security Sector Reform in Bosnia and Herzegovina", Sarajevo.
- Finci, Jakob (2004) "The Experience of Bosnia and Herzegovina". In: Disclosing Hidden History: Lustration in the Western Balkans. Thessaloniki.
- Gender Equality Agency BiH (2010) Women in Police: Situation in Bosnia and Herzegovina, Ministry for Human Rights and Refugees, Sarajevo.
- Guembe, Maria José (2006) "Economic Reparations for Grave Human Rights Violations: The Argentinean Experience". In The Handbook of Reparations, ed. Pablo de Greiff (Oxford: Oxford University Press, 2006).
- Human Rights Watch (2002), "Trafficking Of Women And Girls To Bosnia And Herzegovina For Forced Prostitution A Submission for the United Nations Committee on the Rights of the Child from the Human Rights Watch Children's Rights Division". http://www.crin.org/docs/resources/treaties/crc.39/Bosnia_HRW_ngo_report.pdf [Accessed on 12.08.2010].
- Human Rights Watch (2008) "Still Waiting: Bringing Justice for War Crimes, Crimes against Humanity, and Genocide in Bosnia and Herzegovina's Cantonal and District Courts". Available at www.hrw.org/en/node/62137/section/2, [Accessed on 22.07.2010]
- International Crisis Group (2011) "Bosnia: Europe's Time to Act", Europe Briefing N°59, 11 January 2011.

- Ivanišević, Bogdan (2008) "The War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court", International Center for Transitional Justice, Available at: www.ictj.org/images/content/1/0/1088.pdf [Accessed on 25.07.2010].
- Kett, Maria E. (2005) "Internally Displaced Peoples in Bosnia-Herzegovina: Impacts of Long-term Displacement on Health and Well-being", *Medicine, Conflict and Survival*, Vol. 21, No. 3, pp.199 -215.
- King, K.L. and M. Greening. (2007) "Gender Justice or Just Gender? The Role of Gender in Sexual Assault Decisions at the International Criminal Tribunal for the Former Yugoslavia", *Social Science Quarterly*, Vol. 88, No 5, pp.1049 -1071.
- Kleck, Monika (2007) "Working with Traumatized Women", in Martina Fischer (ed), *Peacebuilding and Civil Society in Bosnia-Herzegovina: Ten Years after Dayton*. Münster: Lit Verlag Available at: http://www.berghof-conflictresearch.org/documents/publications/dayton_kleck_rec.pdf [Accessed on: 02.09.2010].
- Kukanesen, R. (2003) "Female Headed Households in BiH", UN Bosnia and Herzegovina.
- Kurbanova et.al (2011) "Overview On Vulnerability To Food Security In Bosnia And Herzegovina", May 2011, FAO REU, Available at: http://www.fao.org/fileadmin/user_upload/Europe/documents/Events_2011/BIHNAPFS/Vulnerability_en.pdf [Accessed on 1.09.2011]
- Kurze, Arnaud (2011) "The RECOM Initiative: Struggling Efforts to Create Extra-Judicial Space". 6th General Conference of the European Consortium for Political Research (ECPR), Reykjavik, Iceland, 2011.
- Lira, Elisabeth (2006) "The Reparations Policy for Human Rights Violations in Chile". In *The Handbook of Reparations*, ed. Pablo de Greiff (Oxford: Oxford University Press, 2006).
- Lithander, Anna (2000) "Engendering The Peace Process", Kvinna Till Kvinna.
- Malcom, Noel (2002): "Bosnia: A Short History", Pan, 3 Rev Ed.
- Mertus, J. and Hocevar Van Wely, O. (2004) "Women's Participation in the International Criminal Tribunal for the former Yugoslavia (ICTY): Transitional Justice for Bosnia and Herzegovina". Women Waging Peace Policy Commission. Hunt Alternatives Fund. Available at http://www.huntalternatives.org/download/19_women_s_participation_in_the_international_criminal_tribunal_for_the_former_yugoslavia_icty_transitional_justice_for_bosnia_and_herzegovina.pdf [Accessed on 23.07.2010].
- Ministry of Human Rights and Refugees (2010): "Revised Strategy of Bosnia and Herzegovina for Implementation of Annex VII of the Dayton Peace Agreement", Sarajevo.
- Ministry of Justice of Bosnia and Herzegovina (2011): "Report of the Justice Sector Institutions in Bosnia and Herzegovina on Implementation of the Action Plan of Justice Sector Reform Strategy in Bosnia and Herzegovina for the Period January-June 2011". Available at: <http://www.mpr.gov.ba/en/str.asp?id=434> [Accessed on 19.10.2011].
- Mischkowski, Gabriela and Gorana Mlinarevic (2009) "The Trouble with Rape Trials – Views of Witnesses, Prosecutors and Judges on Prosecuting Sexualised Violence during the War in the former Yugoslavia", medica mondiale e.V. Available at: http://www.medicamondiale.org/fileadmin/content/07_Infothek/Gerechtigkeit/medica_mondiale_Zeuginnenstudie_englisch_december_2009.pdf [Accessed on 25.07.2010].

- Nettelfield, Lara J. (2010): "Courting Democracy in Bosnia and Herzegovina: The Hague Tribunal's Impact in a Postwar State", Cambridge Studis in Law and Society: 2010.
- OHCHR (2005) "Report on the enjoyment of the Rights of Families of the Missing Persons in Bosnia and Herzegovina", Sarajevo.
- Olujčić, Maria B. (1995), "Coming Home: The Croatian War Experience." In *Fieldwork under fire: contemporary studies of violence and survival*, edited by Carolyn Nordstrom and Antonius C.G.M. Robben. Berkeley: University of California Press, pp. 186-205.
- Olujčić, Maria B. (1998): "Embodiment of terror: gendered violence in peacetime and wartime in Croatia and Bosnia-Herzegovina", *Medical Anthropology Quarterly*, Vol. 12, No. 1. pp. 31-50.
- Orentlicher Diane F. (2010) *That Someone Guilty Be Punished. The Impact of the ICTY in Bosnia*, Open Society Justice Initiative and International Centre for Transitional Justice (http://www.ictj.org/static/Publications/Orentlicher_BiH_OSJI-ICTJ_ThatSomeoneGuilty_pb2010.pdf. [Accessed on 25.10.2010])
- Picarelli, John T. (2002) *Trafficking, Slavery and Peacekeeping: The Need for a Comprehensive Training Program* (A Conference Report UN Interregional Crime and Justice Research Institute, Turin, Italy May 9-10), http://policy-traccc.gmu.edu/publications/TIP&PKO_EWG_Report_Final.pdf [Accessed on 09.08.2010].
- Popić, Linda with Panjeta, Belma (2010) "Compensation, Transitional Justice and Conditional International Credit in Bosnia and Herzegovina. Attempts to reform government payments to victims and veterans of the 1992-1995 war", Sarajevo, Available at: http://www.norveska.ba/PageFiles/417487/Study_Linda_Popic_english.pdf [Accessed on 14.09.2010]
- Ray, Amy E. (1997). "The Shame of It: Gender-Based Terrorism in the Former Yugoslavia and the Failure of International Human Rights Law to Comprehend the Injuries." *American University Law Review* 46, no.3 (February 1997): 793-840.
- SEESAC (2007) "Firearms Possession and Domestic Violence in the Western Balkans: A Comparative Study of Legislation and Implementation Mechanisms". Belgrade. Available at: http://www.seesac.org/uploads/studyrep/Domestic_Violence.pdf [Accessed on 20.07.2011]
- Simmons, Cyntia (2007) "Women's Work and the Growth of Civil Society in Post-War Bosnia", *Nationalities Papers*, Vol. 35, No. 1, pp.171 — 186.
- Simpson, Graeme, Hodžić, Edin and Bickford, Louis (2012) "Looking Back, Looking Forward. Promoting Dialogue through Truth-Seeking in Bosnia and Herzegovina." UNDP, Sarajevo.
- Smajić, Senada and Ermacora, Sergio (2007) "Poverty amongst Female-headed Households in Bosnia and Herzegovina: an empirical analysis", *South East European Journal of Economics and Business* Vol. 2, No. 1, pp. 69-88
- OSCE (2008) "Moving Towards a Harmonized Application of the Law Applicable in War Crimes Cases before Courts in Bosnia and Herzegovina", Sarajevo.
- OSCE (2010) "Witness Protection and Support in BiH Domestic War Crimes Cases. Obstacles and recommendations a year after adoption of the National Strategy for War Crimes Processing", Sarajevo.

- OSCE (2011) “Delivering Justice in Bosnia and Herzegovina. An Overview of War Crimes Processing 2005-2010,” Sarajevo.
- Tepić, Jasmina (2012) “Do memory initiatives have a role in addressing cultures of silence that perpetuate impunity in Bosnia and Herzegovina?” Impunity Watch, Utrecht.
- Tokača, Mirsad (1999) “Introduction”, in Mirsad Tokaca (ed.) Sin of silence – the risk of speech, Sarajevo: Komisija za prikupljanje činjenica o ratnim zločinima u Bosni i Hercegovini, 1999.
- TRIAL (2009) “General Allegation on BiH to UNWGEID”, Sarajevo/Geneva.
- TRIAL (2012) “Freed, but not Free Yet! The Situation of the Former Camp Detainees in Bosnia and Herzegovina. General Allegation to the Special Rapporteur on Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Working Group on Arbitrary Detention.” Sarajevo/Geneva.
- UNDP (2009) “Vodic kroz tranzicijsku pravdu u BiH” [Transitional Justice Guidebook for Bosnia and Herzegovina] (ed. Pajic et al). Sarajevo, Available at: <http://www.undp.ba/index.aspx?PID=36&RID=88> [Accessed on 30.8.2010]
- UNDP (2010) “Facing The Past And Access To Justice From A Public Perspective”, Special Report, UNDP BiH, available at: <http://www.undp.ba/upload/News/Facing%20the%20Past%20and%20Access%20to%20Justice.pdf> [Accessed on 22.10.2010]
- UNHCR (2000) “Daunting Prospects: Minority Women: Obstacles To Their Return And Integration”, Available at: 80.65.85.77/unhcr/images/stories/Publications/proj.pdf [Accessed on 13.09.2010].
- UNHCR (2005) “Update on Conditions for Return to Bosnia and Herzegovina”, available at: <http://www.unhcr.org/refworld/docid/42f736424.html> [Accessed on 8.09.2010].
- UN Women (2010) “Women’s Participation in Peace Negotiations: Connections between Presence and Influence”, New York.
- Žarkov, Dubravka (2007) “The Body of War. Media, Ethnicity and Gender in the Break-up of Yugoslavia”, Durham and London: Next Wave: New Directions in Women’s Studies.

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