

POLICY BRIEF

Balkan Chronicle: Gender Equality, Transitional Justice and the International Community



"Justice for Girls" protest in Zagreb. Photo: BIRN.



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Key messages

The main conclusion of the report is that **a broader gender perspective to transitional justice (TJ) policies in the Balkans is missing.**

Gender equality and transitional justice policy in the region has been mostly limited to pushing for legally addressing conflict-related sexual violence; the visible side of the violence perpetrated in the conflicts of the 90s. This has presented women as 'helpless victims' and prevented them from becoming and being seen as empowered survivors.

Policy on TJ has failed in particular to address the root causes, the more structural causes for violence, including the on-going economic harm, social stigmatisation and discrimination that is responsible for violence against women, but often invisible, throughout the history of the region of the former Yugoslavia.

Leaving root causes unaddressed and focusing only on the symptoms, the visible side of violence (e.g. rape and torture), will, however, fail to make a real transformative and sustainable difference for the life of women in the region.

The report shows that **widespread impunity for past and present, visible and invisible violence 'successfully' continue to undermine accountability and redress for past crimes and any form of structural change to address gender inequalities and bring about transformation** in the different societies in the countries of the former Yugoslavia.

The report also shows that the political and economic context has left limited space for gender transformative approaches in transitional justice policy. The international community also shoulders responsibility for this – including the EU. Continuously prioritising political settlements and economic reform over issues of transitional justice and gender has weakened TJ in the Balkans. Particularly it has failed to open space for gender transformative approaches.

The report calls to adopt a broader gender perspective to transitional justice policies, that present a more comprehensive picture of the multiple harms endured by women before, during and after the conflicts of the 90s. This perspective needs to include, in particular, the economic, social and cultural dimensions. Policy needs to strengthen the potential of transitional justice to transform gender power relations, especially in the area of reparation, truth seeking and guarantees of non-recurrence.

The EU enlargement process continues to provide an opportunity, but is currently not living up to its full potential to strengthen gender transformative approaches in transitional justice policy in the region. For example, up until now, mere lip service has been paid in terms of political participation. Women's groups need to be better supported in genuinely participating in and gaining access to political decision-making around transitional justice, which goes beyond only supporting them as service providers. The potential of EU enlargement does, however, not only lie in creating real opportunities for the participation of women but also in the space the EU has with pre-accession conditionality. This should be used better to demanding the setting up of a comprehensive, gender-sensitive reparations programme as part of the accession requirements, beside the demand for continuous war crimes prosecutions.

Introduction

Much has been written on gender equality and transitional justice in the countries of the former Yugoslavia.¹ Reports address extensively the question of how to deal with a legacy of conflict-related sexual violence, in particular against women. Equally well covered are issues of gender equality, focusing specifically on issues of domestic violence. One recurring theme in all these reports compiled by the UN, the EU and some international and local civil society organisations is: We have made progress in putting in place legislation and institutions, but the problem is a lack of implementation and ingrained patriarchal structures that reject any kind of change.

Interviews with survivors and activists show that not much has changed on the ground in terms of addressing past and present day violence. If you are a woman from a rural part of Bosnia who was raped during the war the likelihood is great that you have not seen accountability for the crimes perpetrated against you, that you have not, or too late, been redressed for the harm suffered,² that you are facing ongoing stigmatisation for being subjected to sexual violence, and that you are today economically, politically and socially marginalised and discriminated against. You might feel that you are worse off than before the war and that there is not much you can do about it. You might even think that this persisting structural violence against you is ‘normal’.

This report asks the question why this is the case in spite of an international policy commitment on paper to support transitional justice and gender equality. What has gone wrong? The report will start where most other reports end. It aims to better explain the dynamics and forces behind why change is not possible and offer suggestions on what needs to be reformed/transformed. Specifically the report will assess how persisting systems of impunity³ successfully continue to undermine accountability and redress for past crimes and any form of structural change to address root causes for gender inequalities and violence against women in the different societies in the region.

The report will, therefore, first look into contextual reasons⁴ that allowed these systems of impunity to gain and maintain significant power after the transition in the 90s and why gender concerns have been left out of the equation (chapter I). Secondly, it will assess what this has meant for transitional justice (TJ) policy and its potential to contribute to gender transformation. It will demonstrate how these contexts have shaped policies on transitional justice, such as on prosecution, truth seeking, reparations, and institutional reform efforts. It finds that a broader gender transformative perspective to transitional justice policies in the Balkans has so far been missing, and is limited to a focus on legally

¹ The report focuses mainly on the successor countries of Yugoslavia. The region of the former Yugoslavia is sometimes also referred to as the Western Balkans, especially by the European Union and its Member States. The report uses countries of the former Yugoslavia, the Balkans and the region interchangeably. Research for this report focused specifically on Bosnia and Herzegovina, Croatia, Serbia and Kosovo.

² See Article by Balkan Investigative Reporting Network (BIRN), Anja Vladislavljević, Mladen Lakic and Blerta Begisholli, *Compensation Comes Late for Rape Survivors of Balkan Wars*, Pristina, Sarajevo, Zagreb, June 2019, available at <https://balkaninsight.com/2019/06/19/compensation-comes-late-for-rape-survivors-of-balkan-wars/>

³ See research report, *Keeping the Promise: Addressing Impunity in the Western Balkans*, May 2018 (hereinafter Impunity Watch Report, *Keeping the Promise*, 2018). The report finds that: “Twenty years after the end of the conflict, impunity for the crimes committed during the conflict is widespread and ingrained throughout the region. Beneficiaries and promoters of these structures of impunity are political systems that operate on the basis of nationalist ideologies and include in their ranks former war criminals. They have so far successfully managed to lead the public discourse on the past and avoid accountability.”

⁴ Please see on importance of context-sensitive approaches around transitional justice in Duthie and Seils (eds), *ICTJ, Justice Mosaics, How Context Shapes Transitional Justice in Fractured Societies*, 2017 (hereinafter ICTJ Justice Mosaics). Impunity Watch Scoping Study, *Transitional Justice Practice: Looking Back, Moving Forward*, May 2016, p. 5.

addressing conflict-related sexual violence (chapter II).⁵ Throughout the report we will look particularly into the current EU enlargement process and how this process strengthens - or not - transitional justice approaches in their gender transformative potential to dismantle systems of impunity and other factors that marginalise the role of women, including patriarchal structures. In its conclusion, the report will make some recommendations for the way forward. The main audience for this report is policy makers both at the international and local level. The report should, however, also assist civil society in sharpening their policy arguments in any lobbying activity they undertake vis-à-vis their government and international actors.

The driving force behind the report is a strong conviction of “never again”. The impact of war and conflict and its aftermath has been disastrous for women. Contributing to changing this pattern is at the core of this report. The facts are clear. Research demonstrates a direct relationship between gender equality and resilience to and prevention of conflict.⁶ In the Balkans, systems of impunity stand in the way of gender equality. While these systems differ in nature and purpose, some are connected to nation building project that promote ethno-nationalistic ideologies, others combine this with advances that aim for the dissolution of the multi-ethnic state. In any case, they all constitute a real security threat for future stability in the region.

The EU enlargement process is an opportunity to change this dynamic. To do so, however, transitional justice policy needs to integrate better gender transformative approaches that make a real and sustainable difference for women on the ground. The EU policy framework on transitional justice (2015) is a good starting point but needs to be strengthened on its actual gender transformative potential and contextualised to the different situations of the countries of the former Yugoslavia. Implementation needs to move beyond words to show political courage on the ground and solidarity with victims and survivors. The report finds, however, that we are far away from this thinking.

⁵ Please see definition by UN women on gender transformation, UN Women Gender Equality Glossary, available at <https://trainingcentre.unwomen.org/mod/glossary/view.php?id=36>: Transforming unequal gender relations to promote shared power, control of resources, decision-making, and support for women’s empowerment. Reparations that support women’s economic empowerment can also contribute to transformative justice by placing women in a better position to break with historic patterns of subordination and social exclusion with a view to eliminating the pre-existing structural inequalities that have led to or encouraged violence.

⁶ UN Security Council, *Report of the Secretary-General on Women and Peace and Security* (S/2018/900), October 9, 2018, para. 7.

Methodology and Acknowledgment

The report is based on a series of interviews in the region and an extensive desk review of existing documentation around gender equality and transitional justice in countries of the former Yugoslavia.

A series of interviews were conducted on the ground and through phone calls with multiple actors ranging from international and regional organisations, civil society, victims' groups and NGOs, activists and academic. Interviews were conducted over a period of six months. Follow up meetings were held to ensure accuracy of the information presented in this report.

The report is a political piece and does not shy away from addressing opinions around sensitive issues that are often left out in policy discussion. Although it does use principles and standards as a basis, the report rather seeks to work on a vision around TJ and gender equality that can lead to change and is therefore also aspirational in nature. This is a response to observations by the author that there is an alarming lack of hope and ambition for transitional justice more generally in the region. The report seeks to tell a narrative that has not so far been told, or only told by a small minority, and tries to contribute to a change of perspective; a fresh look at the issue. It is an opinion piece but also takes existing empirical work into account. It acknowledges the need to make a link between empirical work and policy.

Over 20 years have passed since the end of the conflicts in the Balkans. This report and other work by Impunity Watch in the region is focused on looking at lessons learned. Through our interaction with actors in the region we keep finding that when it comes to transitional justice the region is in a poor state. Unaddressed past grievances coupled with failed economic policies, that support corrupt political elites could again cause violent conflict. This report has assumed responsibility for reporting the widespread failure to learn from mistakes made, not to point the finger but to inspire policy change in the region but also beyond in other situations where transitional justice is currently relevant.

The report should be seen as living document and as a platform/hub of ideas that can be further developed. It was written and then re-written several times to take into account ongoing discussions and new impressions coming from various on-the-ground visits. The report should thus not be seen as an end, a final statement, but as a process. The author hopes that the report will contribute to dialogue. I also hope to remind us all of initiatives that made great contributions to the thinking around transitional justice in the region – such as the Women's Court – yet are at risk of being entirely forgotten by policy makers.

The author would like to thank to all those that were willing to be interviewed for this report. Special thanks goes to our partners, including BIRN and the Post-Conflict Research Centre. Their support has been invaluable and the author is extremely grateful for their insights, suggestions and thoughts that were shared in the context of writing this report. The author would also like to express his gratitude to the Women's International League for Peace and Freedom's (WILPF) Bosnia and Herzegovina coordinator, her comments and suggestions strengthened the text significantly.

Chapter I

Contextual factors that supported systems of impunity and undermined gender equality

As a recent report by Impunity Watch shows “Twenty years after the end of the conflict, impunity for the crimes committed during the conflict is widespread and ingrained throughout the region. Beneficiaries of impunity are political systems (hereinafter systems of impunity) that operate on the basis of nationalist ideologies and include in their ranks former war criminals”.⁷ These systems hold political power, and as will be explained later also economic power, to this day in the different countries in the region. On all sides, in the former Yugoslavia systems of impunity were able to successfully reinforce a highly masculine culture that subordinates women socially, economically and politically. Within these frameworks group identity, defined through ethnicity and religion, becomes the decisive criteria for political life, belonging and how to organise society. They offer no/little room for diversity, inclusivity and equality in power sharing and the provision of services, as promoted by gender transformative ideas. Privileged access to money - often through illegal and corrupt practices - in an unrestricted and uncontrolled economy has provided these systems additional power and has contributed to reinforcing them – “them” being predominately men.⁸ As many commentators claim, these systems pose a real security threat. They can be the cause of the recurrence of conflict. The brunt of which will again be borne by women.

There are many contextual factors that are responsible for establishing the current status quo and led to the profound inequality of space given to systems of impunity on the one hand and ideas around gender transformation on the other; the former filling the space for ‘political change’ nearly entirely. We will focus in our analysis here predominately on external factors. The reason is that these tend to be underexposed or downplayed in their significance for change. It remains an important cause for alarm that the embedding of the current status quo could happen under the watch of the international community, and especially the EU, as an important driver for change.

We will demonstrate how external factors have contributed to strengthening systems of impunity and thereby limiting the space for gender issues and gender transformation in spite of clear policy commitments on paper. We are not claiming that this was intentionally done. We are, however, certain that politically-informed approaches linking context to policy around transitional justice and gender equality could have contributed to avoid some of the unfortunate consequences outlined in this report. By focusing mainly on external factors the report does not want to downplay in any way the responsibility of local actors and structures, which bear the main responsibility. The report seeks to contribute to forming approaches that will change local structures and actors and outline

⁷ See Impunity Watch report, *Keeping the Promise* 2018, Op cit.

⁸ Women’s International League for Peace and Freedom, *A feminist perspective on post-conflict restructuring and recovery – the case of Bosnia and Herzegovina*, 2019 (hereinafter WILPF 2018 report); Women in Black, Women’s Court: About Event in Sarajevo and About Continue the Process, Belgrade 2017 (hereinafter Women’s Court, 2017); Report of the United Nations Secretary-General on Conflict Related Sexual Violence, Bosnia and Herzegovina S/2019/280 29 March 2019, p. 36 (hereinafter 2019, Report UNSG Report on CRSV), available at <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2019/04/report/s-2019-280/Annual-report-2018.pdf>. Interview with Women’s Studies Center Belgrade, November 2018; Interview with Kosovo Women Network Pristina, November 2018.

the role the international community – with all its limitations – could and should play in this respect.

1. *External actors have described the reconstruction space through an ethnic lens, where ethnic power-sharing is the only solution for peace, reconciliation and stability in the long-run.*

The reconstruction space after the conflicts of the 90s has been dominated by powerful nationalistic elites who were able to capture the key institutions in the newly formed states. They came to power, or were able to maintain power through the support of the international community, including western powers. This was considered necessary to stop the fighting and bring some stability to the region.⁹

As a consequence, ethno-nationalist elites have determined from the very early beginnings of the reconstruction phase what was ‘allowed’ to be reformed and what was not. To change discriminatory gender structures was not at the top of their priority list, to say the least, with the exception of Croatia during an interim period led by the Social Democratic Party.¹⁰ But also here the prism through which nation-building has been seen was a nationalistic one. The EU accession process did not change that much.

Looking back, it is undisputable that there was a need to engage with ethno-nationalists to stop the fighting, especially in Bosnia. Those groups held significant military power throughout the region. As some commentators put it, a more equal gender participation approach at that very moment would have most probably not produced a different immediate outcome, especially due the limited elitist scope of participation which was restrained to militarised elites. Extending participation to include civil society, such as the feminist anti-war voices, could have had the potential, moving beyond its strong symbolic significance, to be an important driver for change in the long-run.¹¹ Lessons from Bosnia have, however, not been learned a few years later in Kosovo where again militarised elites were the main protagonists in deciding on how to understand “peace”.

One of the biggest political mistakes made was failing to prevent the gradual institutionalisation of ethno-nationalistic politics throughout the region. Ideologies were not and have still not been challenged; politicians that represented these ideologies were not side-lined. While the prosecution of some war crimes and rape cases were legally demanded, as well as symbolically and morally important for victims, they did not dismantle these ethno-nationalistic structures. New laws and institutions in the area of gender were created to respond to international demands,¹² which is positive, but the new structures still face massive obstacles in their implementation mainly due to an institutional culture that reinforces gender bias and highly patriarchal societies. These new laws, therefore, have had little to no effect.

Western actors have continued throughout the years to support political reforms that include nationalists. While this might have been a necessity to end the war, there were no strategies in place to end the dominant influence of nationalists – often out of political expediency and prioritising their own national interests such as economic opportunities and migration concerns. This empowered the nationalists. The continuing political

⁹ Tony Judt, *Postwar: A History of Europe Since 1945*, p. 201.

¹⁰ Simic O., Volcic, S, *Transitional Justice and Civil Society in the Balkans*, 2013 (hereinafter Simic, *Transitional Justice and Civil Society in the Balkans*, 2013).

¹¹ Marina Velickovic, Arijana Aganovic, Edita Miftari, Sasa Gavric, 1995-2015 – *Women and Political Life in Post-Dayton Bosnia Herzegovina*, Sarajevo Open Centre, 2015, p. 33.

¹² Hassenstab C.M. and Ramet S.P., *Gender (In)equality and Gender Politics in South-eastern Europe*, 2015.

legitimation, and as we will see later economic empowerment, of these structures has been a constant problem that works against sustainable progress/peace in the region and the international community is partly responsible for helping nationalists grow and solidify their power.

As a consequence, the political systems that are now in place throughout the Balkans are by definition hostile to ideas of equality and gender transformation. This is also a result of the various interviews Impunity Watch did in the context of this report. Continuing to support these systems risks future conflict and instability – the very things the international community sought to avoid. Little self-reflection or reckoning has so far taken place. This is a historical pattern in the Balkans where external actors influence, often in a negative way, but do not take responsibility for it.¹³

Crucial moments for change, along the way, were not used. In Bosnia there is a well-documented trend of lenience in the international community's reform efforts towards ethno-nationalist demands.¹⁴ This has kept discriminatory structures in place and has even allowed ethno-nationalist groups to reinforce their power. Some examples of this "lenience approach" include:

- There was a lack of support for state-level prosecution and courts when they started addressing high level organised crime and corruption in 2011.¹⁵ Also, in 2009 the EU failed to put enough political pressure on Bosnia to implement a judgment by the ECHR in 2009 that challenges discrimination in the electoral system, showing a structural problem in Bosnia with institutionalised discrimination as a negative outcome of the Dayton peace accord.¹⁶ Inaction in these cases guaranteed further the political space for ethno-nationalists. Action could have paved the way for a real democratic non-discriminatory process in which meaningful participation of all citizens would be granted, rather than being an exclusive right of ethno-nationalistic elites. Lessons from the past should be learned. The current scandal of corruption allegations surrounding the president of the judicial council in Bosnia is a good moment to challenge the systems of impunity.¹⁷ A joint letter by the OSCE, EU and US condemning these practices is a good first step and shows solidarity with the demands expressed by demonstrators on the street.¹⁸ Expressing concern is, however, not enough. Words should be followed by deeds.
- Similarly, the Bosnia-wide protests that were held in 2014 that called for social justice and reforms against corruption could have opened up space in the new nation to go beyond ethnic division and subscribe to more social inclusion and solidarity; all areas that are important also from a gender transformative perspective. The protests were, however, cut off with the acquiescence of the international community which did not, or did not want to, understand the

¹³ Tony Judt, Op. cit.

¹⁴ WILPF report 2018, Op. cit.

¹⁵ Ibid.

¹⁶ Ibid. ECtHr, *Sejdić and Finci v. Bosnia and Herzegovina*, Grand Chamber, Judgment, App no 27996/06 and 34836/06, 22 December 2009.

¹⁷ See BIRN, Danijel Kovacevic, Top Bosnian Judicial Official Faces Disciplinary Probe, BIRN, June 2019, available at: <https://balkaninsight.com/2019/06/01/top-bosnian-judicial-official-faces-disciplinary-probe/>

¹⁸ See reporting by the Global Post in June 2019, available at <https://theglobepost.com/2019/06/26/bosnia-judiciary/>

political situation and show solidarity with the people.¹⁹ Again deals were made to please the ethno-nationalists.

- Similar deals that promote nationalism rather than challenge these systems were made during the EU accession of Croatia, where political expediency trumped other considerations, such as a clear stance on reparations for war-related harms, among others for victims of conflict-related sexual violence.²⁰ Since these reparations would also benefit those victimised by the so called “Homeland War”, nationalists were heavily opposed to them. The lack of a clear political stance by the EU on reparations in the case of Croatia’s EU membership is painfully felt to this day in other parts of the Balkans where the simple argument is made by nationalist elites: “If Croatia did not need to do it, why should we?” The current discussions on Kosovo’s status and future also don’t look likely to promote a different message. Here too, the nationalists have so far been given the most room at the negotiation table – at the expense of other voices including those around gender transformation and justice. The question is, how this will change after the recent elections.

In conclusion, too much space has been given in the post-conflict period to ethno-nationalists who drive a gender-hostile policy. In order to promote gender equality and transitional justice that can lead to change, these structures need to be challenged and ultimately dismantled. Here the role transitional justice could play is important but, as will be further shown below, has been too narrowly conceived as mainly criminal justice, which has seen the blame placed on individual perpetrators only who were then presented as outcasts while leaving the broader system of impunity in place.

The political message that comes out of the Balkans is that discrimination, reducing the power in the hands of some, can be institutionalised without any real political consequence. It can pay off. Politics was and is a “man’s world” in the Balkans and, actually, in many parts of the world. The opportunities that presented themselves after the conflicts of the 90s along to break these systems have all so far been missed. And this reality still haunts the region today.

2. *External actors have described transitioning to a neoliberal economy as an absolute necessity without paying much attention at all to who would benefit from such policies*

External actors have through policies described the transitions in the Balkans in the 90s also as a necessary transformation from state-run socialism to a neoliberal economy.²¹ This transformation, which was linked to democratisation efforts, was pushed hard by the international community mainly through a series of economic reforms, the most important ones led by the EU and the World Bank.²²

¹⁹ Denisa Kostovicova (2013) *Civil society and reconciliation in the Western Balkans: great expectations?* in Eviola Prifti (ed.), *The European future of the Western Balkans* - Thessaloniki@10. EU Institute for Security Studies, Paris, France, 2013, pp. 101-109.

²⁰ Simic, *Transitional Justice and Civil Society in the Balkans*, 2013Op. Cit. Interviews conducted by the author.

²¹ See the European Commission, *A credible enlargement perspective for enhanced EU engagement with the Western Balkans*, Communication from the European Commission to the European Parliament, the Council, The European Economic and Social Committee and Committee of the Region, Strasbourg, 6.2.2018, COM (2018) 65 final, pp. 5 – 6. Wolfgang Petritsch. [“Geopolitik am Balkan: China, Russland, Türkei und die arabischen Golfstaaten als Akteure in Südosteuropa”](#) - 3/2018: Europäische Rundschau.

²² WILPF report 2018, Op. cit.; Women’s Court, Sarajevo, 2015.

The economic logic was to create growth through reducing marked constraints and debts which are often seen as the result of overly bureaucratic state structures but also of expensive social welfare benefits and overly protective labour standards. The goal is to increase competitiveness in order to bring investment, jobs and stability. This logic is also at the heart of the EU accession process.

As we can witness today, these economic reforms did not bear the expected results. It did not dismantle the “old power structures”; the nationalists stayed in power and - together with institutions and business groups linked to them - prevented any real reform, any real opening of the economy that ultimately benefits all. These contextual factors were, however, not adequately integrated in economic reforms by the international community, which invested economically and financially in the post-conflict period.²³

No-one asked who would, ultimately, benefit from economic reform and investments or who exactly the international community was supporting. It is clear today that it benefited to a great extent systems of impunity, which have been implicated in past violence, both economic and political. The main losers, this is also clear, are women, minorities and those in opposition to the political and economic status quo.

From a gender perspective, contextual factors were not taken into account, for example in relation to how this economic transformation, that ultimately failed,²⁴ would impact women and was seen by them. Particularly, economic reform initiatives did not take into account past experiences around socio-economic violence, especially those that took place during the conflicts. The international community backed imposing neoliberal economic reforms without considering past and present socio-economic realities on the ground, especially those of women.

Here another important factor needs to be considered, social integration after the disintegration of the former Yugoslavia happened under nationalistic terms and furthermore, that the integration happened through a brutal accumulation of capital through social and economic violence.²⁵ In particular, the fact that women of all ethnicities experienced these changes as major losses by losing jobs and means of income, by being pushed into poverty and by their subordination to reinforced patriarchal structures was not addressed adequately in these reconstruction policies.²⁶ Instead women's issues were declared a rule of law matter only and de-linked from economic considerations. Fancy legislation on non-discrimination was seen as the answer, in addition to selective prosecution for physical harm. But the reconstruction, which continued in parallel, was experienced by many women as one of injustice and impunity; it is felt as social and economic injustice.

Those who illegally enriched themselves during the war continued to do so in the post-conflict era by also benefiting from the reconstruction money that poured into the region to support economic reforms. These groups and structures control politics, rule of law

²³ The reforms were in many cases funded through loans and credits, which explains also the huge debts countries in the region are in.

²⁴ Some would, however, argue that the goal of economic transformation - to transform societies from socialist to (neo)liberal structured economies - have succeeded. See WILPF report 2018. They would add that neo-liberal structures fail to help a society to recover from the war and ensure much needed social justice as a platform from which sustainable and gender just peace is built.

²⁵ Women's Court, 2017.

²⁶ EC enlargement policy and Western Balkan reform package, both detach economic reforms from gender equality issues.

institutions and access to the labour market and the economy more broadly. Unchallenged, they had it easy.

The fact is that the economic and political reality experienced on a daily basis by women in the countries of the former Yugoslavia remains daunting, to say the least. Gender policies that focus only on strengthening equality rights in legislation without looking at the economic realities and investigating who benefits from the current economy will not change much. To recognise this fact and act upon it will be an important step.

In summary, the contextual factors just outlined would have been important to take into account in any reconstruction reform efforts. As a recent report by the Women's International League for Peace and Freedom shows, this has, however, not been the case.²⁷ What remains is that failed economic reforms have financially empowered systems of impunity, providing them with economic power in addition to the political power they could acquire after the war in the 90s. Instead of being a driver for transformation for women, these reforms have in effect weakened gender equality aspirations.

²⁷ WILPF report 2018, Op. cit.

Chapter II

How context has shaped policies on transitional justice and gender equality

These contextual factors that have just been outlined shaped transitional policies in the Balkans and their potential to have a gender transformative effect. The political expedience triggered by how the conflict was resolved and the prevailing economic interests have ensured there has been little space to address gender and transitional justice from a broader, comprehensive perspective.

This meant that TJ in the countries of the former Yugoslavia could not live up to its full potential to be transformative. This is not, we argue, a problem with the mechanisms of transitional justice, it relates more to a failure of policy, which did not, willingly or unwillingly, respond strategically to contextual factors and try to change them. This missed opportunity is not surprising from the perspective of those in power, who benefit from structures of impunity, but all the more so from the perspective of the international community which claims to be a strong supporter of TJ, including its potential for gender equality.

The following pages will give some examples on how transitional policy has been shaped by these contextual factors and what consequences this had from a gender perspective. Again, we look at this from the perspective of policy taken by international actors, such as the EU and the World Bank. The reason is that this perspective is so far under-represented and that there is an urgent need to learn the lessons so to change current transitional justice policy and to not repeat the same mistakes in other contexts where the international community intervenes.

1. Transitional justice policies have focused too narrowly on criminal justice

One of the key functions of transitional justice is to challenge impunity. Impunity for serious crimes committed in the past undermines sustainable peace, reconciliation and democracy. At the individual level, ongoing impunity re-victimises those that have been subjected to abuse. It keeps them in the past and does not allow them to move on. Comprehensive policies are needed that address different justice needs that exist in a society after mass atrocities. These justice needs can range from demands for retribution, such as prosecution of the perpetrators to more restorative justice needs, such as truth seeking and reparations, as well as distributive needs to overcome root causes such as inequalities and preventive needs, to put in place guarantees that things won't happen again. Over the past decades, women in different societies have been at the forefront of identifying these justice needs and fighting for them.

This has not been different in the region. While the wars of the 90s claimed many victims, women were particularly targeted as they were subject to rape and torture. They have been killed, economically exploited and socially marginalised. Multiple justice demands have been identified by women's groups throughout the years, such as the prosecution of the perpetrators, to find the remains of the missing, to receive restitution and reparation for the various harms suffered, to participate in decision making and be acknowledged,

to be remembered and receive assurance that things have changed.²⁸ All of this points to a broader call to combat impunity in a comprehensive manner.

This has, however, not been reflected enough in policy. The policy response to these demands has been far too narrow, focusing mainly on criminal justice. Other more holistic approaches that would include reparations, truth seeking and institutional reform have been given far less priority or have been applied haphazardly. A good indication for that is the lack of comprehensive TJ policies in any of the countries of the former Yugoslavia. This was a key demand by women's group and it could have been easily implemented by a consistent political push by the EU and its member states.

Another indication can be found in the annual country progress reports by the EC that are part of the EU's enlargement policy. The main focus here is on domestic war crimes cases; other mechanisms are addressed in much more brevity and in a disconnected manner.²⁹ The support provided to RECOM³⁰ over the years has not revealed any meaningful results since it lacks sustained political support beside the generous financial contributions.

The consequence of taking such a narrow policy approach is that transitional justice could not deploy its full potential to contribute to transformation and dismantling of the engrained systems of impunity, including from a gender perspective. It has left untouched gender-hostile and ethnocentric ideologies and has been given little ammunition to challenge the post-war social integration space as shaped by nationalists implicated in war-time violence and abuses. It had thus left the structures that have been responsible for violence against women in place. TJ policies have failed to tackle a core *raison d'être*: to combat impunity. This is bad news from a gender perspective but more broadly also for the fight against impunity in the Balkans.

Contextual factors, especially the ethnic power-sharing arrangements, such as in Bosnia and to some extent on Kosovo, have pushed transitional justice into narrow approaches

A deeper analysis reveals ethnic power-sharing arrangements in some of the post-conflict spaces in the former Yugoslavia have contributed to narrowing the scope of transitional justice efforts to "prosecution only". This might cause some controversy, but criminal justice was most likely the "lesser evil" and the pill easiest to swallow for those mediating the end of the conflict and deciding on the parameters for reconstruction after the war. It is no secret that criminal justice both domestically and internationally depends heavily on cooperation, that it will manage only to convict a handful of perpetrators, that it will target mainly physical violations and leave economic violence or systemic impunity untouched. It will reveal procedural truths but leave out complex interwoven causes for conflict that are often driven by local and international power structures and interests. There is little to no political interest in telling this narrative. It is easier to point the finger to a handful of convicted "evil outcasts."

²⁸ Hadsimesic, Lejla, Consequences of Conflict-Related Sexual Violence on Post-Conflict Society: Case Study of Reparations in Bosnia Herzegovina, in Ni Aolain, F, Cahn, N, Haynes, D.F., Valji, H (eds), *The Oxford Handbook of Gender and Conflict*, 2018, p, 508 (hereinafter Ni Aolain, *The Oxford Handbook of Gender and Conflict*, 2018).

²⁹ For EC progress reports on the different countries of the Western Balkans see website of European Neighbourhood Policy and Enlargement Negotiations, available at https://ec.europa.eu/neighbourhood-enlargement/countries/package_en.

³⁰ The acronym RECOM stands for the Regional Commission Tasked with Establishing the Facts about All Victims of War Crimes and Other Serious Human Rights Violations Committed on the Territory of the Former Yugoslavia from 1 January 1991 to 31 December 2001.

It somehow seems that nationalistic structures in the Balkans have over the years managed to evade any real consequences or making any real changes despite war crimes cases. Criminal justice is at the end of the day the response least harmful to their system, especially in situations where institutions are weak or easily to influence. This reality contrasts with “the big promise” and expectations for justice at a moment where public pressure was high after witnessing the first fully televised war. This expectation has ebbed away, especially after the closing of the International Criminal Tribunal for the former Yugoslavia (ICTY). The failure of the ICTY to emphasise its communicative function by nurturing justice movements on the ground in the former Yugoslavia has backfired. Nationalists have for far too long had too much space to foster their ideologies and spread their narrative.³¹

Broader approaches are needed that take TJ to the community level

We are not claiming that criminal justice has no role to play. Victims did and continue to demand it. What we can witness in the countries of the former Yugoslavia is that on its own it is, however, too vulnerable to carry the burden of transitional justice and to change gender hostile ideologies. The best example of this can be seen in the situation today in Prijedor, Northern Bosnia. Prijedor was the first place where ethnic cleansing took place during the early 90s. Crimes committed have been the subject of various prosecutions at the level of the ICTY and at the Court of Bosnia and Herzegovina. Visiting Prijedor today one can quickly see that nothing has changed especially for women survivors. The trauma of ethnic cleansing is relived every day by provocation from the local authorities, which is expressed through a revisionist stance by reinterpreting sites of remembrance³², and also economically by being discriminating against in the search for jobs. Many have simply given up and left.

There is a growing awareness by some parts of the international community, especially in Bosnia, about the shortcomings of a narrow approach to TJ. The United Nations Population Fund’s (UNFPA) work on conflict-related sexual violence is an example, since it interprets access to justice in a much broader sense by acknowledging the possibility of structural problems such as stigma within the family and community that can provide insurmountable obstacles for most women to claim their rights.³³ Other factors such as lack of sustained political support for institutional reform, including the implementation of existing laws (e.g. victims can often not access their rights because there is no money for the implementation of these rights, hence they give up in trying) and the fight against impunity more broadly, also by the international community, have led to frustration among victim groups and activists that change will not come.

³¹ Institute for Integrated Transitions, *Getting Back to Basics: Transitional Justice, Communications and Societal Narrative* (forthcoming 2019).

³² One example is the Trnopolje Camp, where during the ethnic cleansing campaigns mainly women, children and elderly men were kept and subjected to crimes against humanity. Today it serves as a site for the remembrance of Serb heroes of the war of the 90s.

³³ See UNFPA Bosnia website, available at <https://ba.unfpa.org/>. See also 2019, Report UNSG Report on CRSV. See recent regional conference hosted in Sarajevo (25. – 26. September) by the Inter-Religious Council of Bosnia and Herzegovina (IRC) and the United Nations Population Fund (UNFPA) in support of survivors of conflict related sexual violence, available at <https://ba.unfpa.org/en/news/inter-religious-council-bih-held-conference-sustaining-peace-through-trust-building-and>. The conference is part of a joint UN program “Seeking Protection, Support and Justice for Conflict-related Sexual Violence Survivors in Bosnia and Herzegovina”, implemented by IOM, UNDP, UNFPA and UN Women. Also consider that the number of women claiming disability pensions for conflict-related sexual violence, where these exist, is very limited in the Western Balkans and a result of stigma and other structural factors that create obstacles for would-be claimants.

Other Organisations also seek to take a broader approach. The Organisation for Security and Co-operation in Europe (OSCE) focus on education, including on history books, is another example of broader approaches that focus more on the community and cultural level. A 2018 joint report by the OSCE mission in Kosovo on men's perspective on gender equality in Kosovo is another example of looking at structural dimensions in the context of transitional justice.³⁴ The EU has so far been lagging behind by continuously focusing predominantly on war crimes prosecution in its work around TJ.³⁵ All these activities by the international community should be followed up by a thorough assessment on how the investment matches the outcome, the real change it produced on the ground for victims and survivors. Investments by the international community should also be a reflection of the current needs of victims and survivors and not follow policy or donor priorities set in Brussels, New York or Geneva.

An area where more policy support is needed is reparations.³⁶ Over the years, the issue of reparations, with its monetary component and its strong recognition function by acknowledging the harm caused to survivors, has been manipulated by nationalists who skilfully managed to subordinate the war and its consequences as part of their own political agenda. Instead of recognising that harm has happened on all sides irrespective of ethnic background, reparations have been turned into a terrain of division and competition about which group has suffered most. Instrumentalised like this, the issue of reparations has lost its transformative potential since they can no longer play a role to promoting social integration. This failure hits women the hardest. It is striking that 20 years after the war in Bosnia there is still no state law on reparations for victims of torture. A new law on victims of torture in the Republika Srpska is ethnically biased. Kosovo only provides pensions for rape that occurred until June 1999, de facto excluding ethnic Serb victims.³⁷ With the exception of Croatia, there is still no comprehensive compensation scheme in any of the countries of the former Yugoslavia and survivors are only eligible for a disability pension, which is a form of welfare rather than reparation. A clear policy focus, including by the EU, could still make a change. This would mean increasing the capacity within the EU's delegation around reparation, conducting regular analysis on the topic in the country-specific progress reports in order to make it part of conditionality for accessions and addressing it in high-level political dialogues with decision makers.

³⁴ OSCE, A men's perspective on Gender Equality in Kosovo, main findings from the International Men and Gender Equality Survey, May 2018.

³⁵ On a positive note the EC in its progress reports 2019 is emphasising the message that strategies for prosecution should be particularly concerned with the systemic and/or structural dimensions of massive violations. This message is now regularly given in the annual progress reports by the EC. A positive example is the recent progress report on Kosovo, where the challenges posed by systems of impunity are highlighted. Similarly, the progress report on Serbia mentions these challenges. Ongoing political follow up is needed, as well as in the case of Kosovo's technical support. More consistent policy focus on conflict related sexual violence cases and how they are reflected in prosecutorial strategies should be taken. Here only the progress report for Bosnia consistently addresses this question. An obvious problem exists with Croatia which is falling behind on the prosecution of war crimes cases, including cases of conflict-related sexual violence, but no real mechanisms exist within the EU to challenge that. See EC progress reports, Op. cit.

³⁶ Women's International League for Peace and Freedom as part of Women Organising for Change in Syria and Bosnia and Herzegovina, *The Concept and Framework for the Development of a Gender-Sensitive Reparations Program for Civilian Victims of War in Bosnia and Herzegovina*, 2015.

³⁷ Impunity Watch, *Keeping the Promise*, Op. Cit.

2. *Policies have interpreted transitional justice too narrowly by looking mainly at physical harm or visible violence while ignoring to address root causes.*

Contemporary policy discussions around transitional justice and gender point to the need for policy to contribute to addressing the root causes for violence and abuses. This is, for example, duly acknowledged in recent policy documents, including by the EU. The EU policy framework on transitional justice states in this respect: “The EU... supports transitional justice processes that are forward-looking with the aim to transform society by identifying and dealing with root causes of conflict and violence that may reside in discrimination, marginalisation or violation of social, economic and cultural rights.”³⁸

Contrary to this policy statement, in the Balkans justice efforts have mainly focused on the visible consequences of the war; rape, torture and disappearance. The invisible side, the structural violence, as well as the psycho-social consequences have been mainly left out. This had the effect that the root causes, which lie in discriminatory and sexist practices both at the private and public level have not been addressed. Civil society, specifically feminist organisations, have since the conflict times provided, often with little means and under huge constraints, support to victims and survivors. Recently some programmes by the international community have started to focus also on the trauma and psycho-social needs of victims, which is positive, but further efforts are needed to increase the current rather insignificant official state support in this area.³⁹

The lack of a systematic response to structural violence and the failure to dismantle structures of impunity that promote ethno-centric power can clearly be seen today in the countries of the former Yugoslavia. Gender stereotyping has been institutionalised and the role a “good woman” needs to play in the family and community is clear.⁴⁰ Conservatism and patriarchal structures are enjoying a renaissance.⁴¹ There are staggeringly high levels of domestic violence.⁴² The fact is, and this is well documented, that socially, economically and politically women continue to be marginalised, which is shown in the lack of their real political participation in political decision-making, including in TJ processes.⁴³ The drivers of the political systems in place are yet again

³⁸ See the EU’s policy framework on support to transitional justice, IV, 9, available at http://eeas.europa.eu/archives/docs/top_stories/pdf/the_eus_policy_framework_on_support_to_transitional_justice.pdf (hereinafter EU TJ policy framework).

³⁹ E.g. Seeking Care, Support, and Justice for Survivors of Conflict Related Sexual Violence in Bosnia and Herzegovina – Phase II, Activities implemented by the International Organisation for Migration, on file with the author. This activity is part of a joint UN program “Seeking Protection, Support and Justice for Conflict-related Sexual Violence Survivors in Bosnia and Herzegovina”, implemented by IOM, UNDP, UNFPA and UN Women.

⁴⁰ On gender stereotypes within the judiciary see TRIAL International report, Rape Myths in Wartime Sexual Violence Trials, Sarajevo, 2017, available at <https://trialinternational.org/wp-content/uploads/2018/01/20180112-TRIAL-Rape-Myths-ENG-WEB.pdf>.

⁴¹ FAO, Gender disaggregated data - Western Balkans, Statistical Reports 2005-2013, available at http://www.fao.org/fileadmin/user_upload/nr/land_tenure/Genders_Report_WB.pdf; See OSCE, A Man’s Perspective on Gender Equality in Kosovo, Op. cit; Marina Hughson, Men in Serbia, Changes, Resistance and Challenges, Results of Research on Men and Gender Equality – Images Serbia, 2018, available at <https://promundoglobal.org/wp-content/uploads/2018/06/IMAGES-Srbija-ENG-print-1.pdf>; Srdan Dusanic, Man and gender relations in Bosnia and Herzegovina, results of “images” research, 2012, available at <https://promundoglobal.org/wp-content/uploads/2015/01/Men-and-Gender-Relations-in-Bosnia-and-Herzegovina-Results-of-IMAGES-Research.pdf>; see also Social Institutions & gender Index (SIGI) 2019: <https://www.genderindex.org/>. It can be noted that some women are in leading positions in governments in the Western Balkans. This still doesn’t mean that things are changing around policies on gender and transitional justice.

⁴² See OSCE led Survey on Violence Against Women: Bosnia and Herzegovina - Results Report 2019, available at <https://www.osce.org/secretariat/423470>.

⁴³ See e.g. The World Banks Gender Data Portal, available at <http://datatopics.worldbank.org/gender/country>. See also Gender Quotas Data base by International IDEA, Institute for Democracy and Electoral Assistance, available at <https://www.idea.int/data-tools/data/gender-quotas/country-view/47/35>. See also work by OSCE, including the

ethno-nationalistic structures, which are able to operate without fearing any form of consequences. They can act with full impunity.

The policy mistakes in the reconstruction phase after the wars of the 90s started early on with a lack of documentation around these more structural forms of violations. Documentation policies focused exclusively on mass human rights violations, such as extermination, rape, enforced disappearances and torture.⁴⁴ Broader structural violence against women, including economic, social and cultural violence, was not officially documented and, thus, has not been integrated as part of the narrative. The narrow criminal justice driven approach shaped the selection of what should and should not be documented. Economic violence was not considered part of prosecutorial strategies, including at the ICTY. Priority was given to civil and political rights violations over any other more structural related expressions of violence. The context did not allow for more. It shaped what was politically opportune and structural violence was not.

Truth-seeking processes could have made a difference in complementing the narrow approach on criminal prosecutions in making the more structural violence visible. However, there has so far been only very limited forms of official truth seeking in the region.⁴⁵ The suppression for many years of official truth seeking is clear evidence of a lack of any real intention to know what happened and why. Truth seeking, if conducted independently, would have stood the best chance of revealing the patterns and systems that have been responsible for the violence and to make recommendations on how to change them. It would have shown, if given the right mandate, that these systems existed across ethnic divides and how especially women were victimised by these systems. The civil society-led Women's Courts showed the potential truth seeking has and stood as a strong symbol for stepping out of the ethnic trap by putting women's voices at the centre. But its messages and recommendations are forgotten by most of the policy makers today and have never been taken into account. If they had been heard, they could have informed a context specific model for more holistic and transformative policy approaches on TJ in the region.

Also the civil society led RECOM initiative has been struggling for years to get official political support and this is for a reason. The political space for official reckoning is small, and the status quo in the different Balkan countries is keeping this intentionally so. Independent truth seeking could potentially be dangerous for systems of impunity. This means that the RECOM initiative needs to continue to manoeuvre carefully through this. To look at its gender transformative potential and connect to grass roots groups, including those working on gender, would increase its chances of re-creating a strong movement that can contribute to the fight against impunity.

The success in the field of the missing is often highlighted as being remarkable and that it stands as an important symbol for giving meaning to the right to know.⁴⁶ The return of the remains of those killed during the conflict has been a key demand of families and

2013 Comparative Study of Structures for Women MPs in the OSCE Region, available at <https://www.osce.org/odihr/105940>. See article by Denis Čarkadžić, Poražavajući broj isabranih žena u entitetske i državni parlament, October 2018, available at <https://istinomjer.ba/porasavajuci-broj-isabranih-sena-u-entitetske-i-drzavni-parlament/?fbclid=IwAR1mA-BD532mt43ox4Ys7P5SI696q8sMEmqbhsgfkaTyjmxKxsxBp9mRfJg>.

⁴⁴ See e.g. Ewa Tabeau (ed.), *Conflict in Numbers. Casualties of the 1990s Wars in the Former Yugoslavia (1991 – 1999)*, Testimonies vo. 33, Helsinki Committee for Human Rights in Serbia, Belgrade, 2009.

⁴⁵ See Impunity Watch, *Keeping the Promise*, Op. cit. Domestically some official truth-seeking processes too place such as the Srebrenica Commission.

⁴⁶ See Impunity Watch report, *Keeping the Promise* 2018, Op cit.

brought some form of closure. Its contribution to challenging structures of impunity and its more invisible effects is however limited. The area of the missing is a highly gendered field. The process does not offer any answers as to why mainly men disappeared and why women stayed behind. And even more importantly it does not ask the question: what happened to the women? Some attempts are made to support reparations and they should be reinforced. The field has, however, traditionally been politically neutral, and has had its own successes through that, but has made a limited contribution to challenging structural violence directed against women.

3. *An important narrative that has been left out by transitional justice policy is the economic dimension.*

This report has already noted how the economic context has shaped the post-conflict reconstruction space. TJ policy as being part of this space has not touched the economic dimension of the war and of the post-conflict era, despite repeated calls by feminist organisations.

Civil society was and is the only actor that brings up the economic dimension. Testimonies by the Women's Court document well the social and economic violence that women were exposed to throughout the disintegration process of the former Yugoslavia. The "nationalistic hysteria and the wars that accompanied the disintegration" were vehicles for those in power to accumulate capital, often through illegal ways.⁴⁷ The logic of ethno-nationalisms that captured the new states served to legitimise brutal social and economic violence, mainly by men, such as looting of public and private property, discrimination in the work place, ethnically-based economic repression, living in penury and poverty.⁴⁸ Women's testimonies describe well the disastrous impact this had for them and the trauma they then experienced.

From the perspective of women, the post-war period saw a systematic erosion of existing systems and ideas that were based on solidarity and redistribution. As described so well in the report by the Women's Court: "The redistributive role of the state in ensuring economic and social justice diminished dramatically, together with catering to the interests of national tycoons, foreign investors and international financial institutions".⁴⁹ What comes up again and again is that systems of impunity were able to benefit from these developments.

The recognition of harm is one of the key aims of transitional justice. Recognition is important for victims at the individual level but also important collectively at societal level. Recognition also plays an essential role as a guarantee of non-recurrence. Transitional justice has until now not been able to really contribute to recognising the economic dimension of the conflict as well as the post-conflict period. The economic harm suffered and the loss experienced has not been recognised, nor has the contribution of women to rebuilding the countries been duly acknowledged. Austerity measures imposed as part of the post-war economic reconstruction and reform philosophy have added additional stress on women and increased their structural marginalisation, despite a general call for gender mainstreaming and analysis in policy commitments and statements.⁵⁰

⁴⁷ Women's Court, 2017, Op. cit.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ WILPF report 2018.

It is here where we identify the biggest gender gap, and the biggest need for a shift of policy. Current policy, such as the EU gender action plan II are silent on this issue, so are the annual progress reports.⁵¹ In addition, there has been very little coordinated, analytical work done by civil society, with some important exceptions. Local civil society is overwhelmed with filling holes, such as huge protection needs for women involved in cases of sexual violence, and running after highly complex and sophisticated policy processes, especially in the enlargement arena. There is a need to put in place participatory and consultative processes that provide space to think about and develop policies with local actors that take into account the economic dimension.

Many workshops continue to be organised by international donors around gender and transitional justice, but they often end up as a listing of projects, best practices and success stories. The underlying issues and structural problems, especially around economic violence and inequality, are hardly discussed. Beside the problematic lack of policy focus, the problems of a donor driven civil society and how it annuls space to discuss real contextual challenges by only wanting to focus on stories of success become very apparent here.⁵²

4. *International policies have placed responsibility for failure on local societies and communities only without routinely evaluating the international community's efforts or addressing its own shortcomings.*

Meaningful international support in the area of TJ is crucial. It has been most effective when it was done in an inclusive manner with strong civil society buy-in. TJ policy that aims to contribute to change also needs to acknowledge complexity and avoid presenting a one-sided black and white picture. The past is far too complex with multiple layers of responsibility.

Building on the aforementioned, when one reads the reports and assessments by international actors, such as the EU or the World Bank, one can see a clear assignment of responsibility for the lack of progress on gender equality issues. The main “culprits” are local societies and their institutions as well as patriarchal structures. This is of course true and these structures have been reinforced by broader social, political and economic factors, some related to the conflicts some not, that have found their expression in militarization, violent masculinities, ethno-national political structures, domestic violence and violence against women in general. Weak or dysfunctional institutions that are often driven by gender bias have not had the effect of dismantling these structures. They were not able challenge the existing culture of impunity.

In order to change and to achieve progress in the area of gender equality these structural factors would need to be addressed; ultimately leading to the dismantlement of

⁵¹ In 2015, the European Commission (EC) and the European External Action Service adopted the second Gender Action Plan, “GAP II”, available at https://ec.europa.eu/europeaid/eu-gender-action-plan-ii-gender-equality-and-womens-empowerment-transforming-lives-girls-and-women-0_en. For implementation of GAP II in WB countries see Nicole Farnsworth and Iliriana Banjska for Kosovo Women's Network, *Mind the Gap, An Independent Evaluation of the Implementation of the EU Gender Action Plan II in Western Balkan Countries*, 2017.

⁵² See a recent report by the Kosovar Centre for Gender Studies (KGSC) on Gender Mainstreaming in European Integration (2016). The report reads like a EU report and not a civil society report. It presents some interesting findings in respect of lack of awareness by women in Kosovo around the EU integration process and gender equality policies but then follows religiously the EU's gender action plan priorities as well as the project driven approach by stating “that the most effective way of forwarding the gender equality agenda has been by building success stories, which can be replicated in other places of the country.” It speaks the language of the EU and not the language of the victims. It fails to contextualise the issue and avoids looking into drawing connections between the past the present. It makes gender equality a pilot process instead of a societal vision to stand behind and fight for.

structures. This would require long-term political will. Change won't happen overnight and it would require policies based on a broader contextual analysis. This is, however, missing in most policy processes, making them mainly reactive and thus losing the transformative potential policy can have. This can clearly be seen in the area of gender equality.

Policy in this area is mainly reacting to the symptoms. The core structures are not touched. Let us give some examples here.

One example could be the previously mentioned ECHR judgment in the *Sejdić-Finci* case. The judgment addresses the heart of the matter, discriminatory structures produced by ethnic power-sharing arrangements as enshrined by the Dayton Agreement (or Accord). This agreement, as has been established before, limited significantly the space for gender equality and transformative approaches and benefited, for over 20 years now, ethno-nationalist structures that have been operating with impunity for past and current crimes. Up until 2014 the EU followed a conditionality policy on this matter.⁵³ The entry into force of a Stabilisation and Association Agreement (SAA) between Bosnia and Herzegovina and the EU was conditioned on constitutional changes to remove discriminatory provisions from the electoral rules for the presidency and the state-level House of Peoples. This meant in fact changing the power-sharing agreement enshrined in Dayton, which ultimately could have weakened the power of ethno-nationalistic structures. This could have opened up space for pushing for gender equality. The opposite was the case. The EU changed its approach and agreed to the entry into force of the agreement (1 June 2015). The leverage is now gone. The EU consistently reminds Bosnia to implement the judgment but so far with no avail as there is no incentive for these structures that benefit from Dayton to do so because it would reduce their own power. What continues is a policy of addressing the symptoms by increasing the capacity of institutions and including overly morally-outraged statements in the annual progress reports noting that still nothing has changed. One commentator put it well: "The candidate countries pretend they want to reform, and we pretend to want them to join the EU."⁵⁴

Another example can be found in discussions, statements and reports written by international actors on gender-based violence, both war-related and in terms of domestic violence.⁵⁵ Here a clear assignment of guilt for violence directed against women is made. The dominant conservative and patriarchal structures are highlighted, and rightly so, as the main obstacle for gender equality. As many point out, these structures are indeed responsible for violence against women and have culminated into widespread rape against the other ethnic group during the wars in the 90s.⁵⁶

The questions, however, that are often suppressed, include: Why are ethno-national ideologies, that led to war, and caused massive violations of international human rights

⁵³ European Commission Staff Working Document, Analytical Report, *Accompanying the document*, Communication from the Commission to the European Parliament and the Council, Commission Opinion on Bosnia and Herzegovina's application for membership of the European Union, Brussels, 29.5.2019 SWD(2019) 222 final, available at <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-bosnia-and-hersegovina-analytical-report.pdf>.

⁵⁴ Balkan Insight, Garcevic, Vesko, EU Election Results Only Worsen Balkans' Bleak Perspectives – OpEd, May 29, 2019, <https://www.eurasiareview.com/29052019-eu-election-results-only-worsen-balkans-bleak-perspectives-oped/>

⁵⁵ See 2018 mapping report by European Women's Lobby (EWL), Regional Forum for the Promotion and Monitoring progress of the Implementation of the Istanbul Convention in the Western Balkans and Turkey, available at <https://www.womenlobby.org/Regional-Analysis-of-Policies-and-Legislation-on-Violence-against-Women-and-the>

⁵⁶ Ni Aolain, *The Oxford Handbook of Gender and Conflict*, 2018, Op. cit.

and humanitarian law allowed to not only exist but be the “drivers” of transformation from war to peace? How have those ideologies contributed to increased gender inequalities and in particular retrogression of the women’s position in the society? What comes out of interviews is that the consequences of the war and the policies to address those consequences pushed women further into situations of dependency and traditional roles. The economic factor plays thereby an important role. Because of failed economic reform efforts that only benefited a small (masculine) elite, women lost their jobs, lost their social status in society and were pushed back into the traditional women’s role in the family. In addition, unaddressed economic violence, stemming from the war, such as lost property, together with trauma from physical violence, left deep scars. Widespread impunity for these crimes does not allow them to heal. There is still much to be written and reckoned for in this regard. The fact is that policies have been reactive and failed to take a holistic and intersectional understanding of the issue of gender with the aim of dismantling these structures or at least not financially strengthening them.

The reason why this has not happened might be because this would point to multiple responsibilities, including also of reforms and investments supported by the international community. All of this would tell another - far more troubling - story, that is moving away from the current biased approach to assign responsibility for inequality only to Balkan societies without looking at gendered policy making in the area of transitional justice and gender equality within the international community that is active in the Balkans (e.g. among and within EU member states). The lack of gender equality and the existence of patriarchal structures are not a Balkan only phenomenon. How this influences policy and what impact it has needs to be further inquired. Unfortunately, this fact has so far not been acknowledged.

5. *Women have not been part of decision making on which way to go in the area of transitional justice.*

Participation and consultation is essential for TJ to be meaningful and effective. This is widely acknowledged by policy. The participation of women in decision-making around reconstruction policies – including the design and function of transitional justice mechanisms – is important from an empowerment perspective but also has a potential role in preventing future conflict, as a recent study shows.⁵⁷

Feminist groups have from very early on been calling for the prosecution of conflict-related sexual violence.⁵⁸ This call has importantly shaped the work of the ICTY but as the tribunal winds down and responsibility for prosecutions – including sexual violence cases - is now at a local level, there has been a marked decline in prosecutions and only low-level perpetrators are pursued.⁵⁹ Other calls, such as for strengthening political participation or to address economic violence and inequality have, however, not been picked up on. In interviews, women’s groups have expressed the feeling that decisions are taking place behind closed doors and that their participation remains a mere lip service.

As noted before, concrete recommendations such as those made by the Women’s Court have not been followed up. Processes to develop TJ policies in the region, such as in

⁵⁷ Christelle Rigual, Rethinking the ontology of peacebuilding. Gender, spaces and the limits of the local turn, *Peacebuilding*, 6:2, 2018, 144-169.

⁵⁸ Catherine O’Rourke, Transitional Justice and gender, in Cheryl Lawther, Luke Moffett and Dov Jacobs, *Research Handbook on Transitional Justice*, 2017, 117.

⁵⁹ See Impunity Watch report, *Keeping the Promise* 2018, Op cit.

Bosnia or in Kosovo, that had strong buy-in from women's groups have been discontinued and policy drafts have not been adopted or have been shelved altogether. In Bosnia, for example, the draft TJ strategy, as a consequence of the participation of women's groups, takes a gender sensitive approach to TJ by addressing the fact that "women and men had different experiences of the specific circumstances during the war 1992-1995, and consequentially, of their post-war situations".⁶⁰ It also acknowledges that "women were not only victims of sexual violence; they were also victims of expulsion, loss of relatives, loss of 'breadwinners' etc." This goes to show that strong policies can be developed through meaningful participation. The problem is that they are not taken up. In the concrete case of the Bosnian TJ policy it failed due to political resistance across the different parties, but predominantly from those based in Republika Srpska. More political pressure, also in the context of the EU accession process, could have made a difference.

Interviews with women's groups and civil society showed participation mainly happens through conferences and workshops. A plethora of recommendations have been developed through these events, but even these recommendations in the majority of cases remain unaddressed/have not been implemented. This causes frustration and a feeling of being used just for box-ticking purposes. This current practice shows there is a need to rethink what participation means. It should not be a one-way street, and the end should not 'just' be another report with recommendations. What groups want to see is that their participation leads to change. Impunity Watch will dedicate one of its next policy reports on the topic of participation.

6. *Policy has been too driven by short-term success stories. We need to do much better in how we evaluate successes.*

TJ processes are long-term processes. Dealing with a violent past is not a linear process. It has been described more as a process that ebbs and flows.⁶¹ So it is difficult to speak about success, especially in the short term. As has been seen in many contexts a temporary success can become a failure in the future. Humble approaches that assess recurrently what the context specific challenges are and how to overcome them have proven to be more meaningful. This implies that transitional justice is approached as a dynamic process with flexibility to change direction along the way according to contextual needs and with a clear vision of change.⁶² Applied like this, it is also better equipped to respond to structural violence, such as in the area of gender.⁶³ Gender-hostile structures are persistent and reinvent themselves all the time. Policy needs to be reactive to that. It needs to target these structures relentlessly and with an innovative but also courageous spirit. Most of the time policy is, however, static, skewing away from confronting powerful elites/structures and operates as if there is a clear beginning and an end.

As mentioned before, this is also the problem with contemporary transitional justice policy, which is too static and mechanism driven. The mere establishment of a court, creation of a truth commission or piece of legislation on reparation are seen as ultimate policy goals and sold as success stories. How these mechanisms work and function in a specific context, when to place them and why this particular mechanism and not the other

⁶⁰ BIH Ministry for Human Rights and Refugees, BIH Ministry of Justice, Transitional Justice Strategy for Bosnia and Herzegovina, Working Paper, Final Draft, Sarajevo, March 2013.

⁶¹ Arthur, Paige, How "Transitions" Reshaped Human Rights: A Conceptual History of Transitional Justice, VL 31 Human Rights Quarterly, 2009.

⁶² Ni Aolain, *The Oxford Handbook of Gender and Conflict*, 2018, OP cit.

⁶³ *ibid.*

is a secondary consideration for policy-makers. TJ policy, if it wants to make a difference, should allow for more strategic planning and thinking. It should focus discussions around purpose, asking why we are choosing a certain TJ initiative, before the mechanism/institution is actually created. This would allow for “hooks” to be put in along the way that enable everyone to slowly climb difficult and complex contexts, ensuring one does not fall back all the way when there is push back or something unexpected happens.⁶⁴

TJ policy in the Balkans has promoted mainly institutional fixes and donors keep demanding short-term success stories. The work on gender and TJ is the best example of that. It focused for a long time mainly on access to justice for conflict-related sexual violence. For many years it was enough to count as a success that a new piece of legislation was introduced or that a project was completed here and there. The actual impact on the ground, whether it made a difference in the long-run in a specific context or a specific community was secondary. This is slowly changing and interviews on the ground show that policy failures are starting to be acknowledged. There is, however, still a trend by international agencies, who compete for donor money, to oversell some of their projects as success stories. They use their international network and leverage to promote their work in international policy debates and documents. This is obviously noticed on the ground and does not help to change the rather negative perception of internationals working on TJ.

Very rigid funding schemes that expect change in three years are part of the problem. Change needs time and enduring/sustainable support at all levels. Support often does not reach the grass roots, community level. There is also a problem with how money is made available. It is easier today to get big grants worth several millions of euros than more diverse funding of lesser amounts that could be used by small grass roots organisations for their work. The current way funding is done benefits bigger organisations that have the capacity to fundraise and administer big amounts of money. But the need today in the Balkans is elsewhere, closer to the ground.

7. Transitional justice and gender is disconnected from other fields such as development and security. They are not sufficiently human-centred.

As the EU notes in its policy framework on transitional justice: “Transitional justice is seen today as an integral part of state- and peace-building and therefore should also be embedded in the wider crisis response, conflict prevention, security and development efforts of the EU.”⁶⁵ The EU expressed its commitment towards helping countries “get back on track towards sustainable long-term development, with responses that must be context-specific and driven by the reality of the situation on the ground”. To link justice to other policy fields such as security and development and be context-specific is considered essential for effective and meaningful transitional justice responses today.

When looking at Balkans the connection of different policy fields such as development and security with questions of justice is rather underdeveloped. Security and economic considerations trump justice considerations. As this report shows, justice and with it gender justice has little space to operate. This is the main problem for progress in the region. To change this, a radical rethinking of policy is needed which acknowledges the

⁶⁴ Bell, Christine, ‘Contending with the Past: Transitional Justice and Political Settlement Processes’, in *ICTJ Justice Mosaics*, Op Cit.

⁶⁵ EU TJ policy framework, Op. Cit.

centrality of local actors and recognises the complex, iterative, multi-layered, and dynamic nature of the processes of conflict and peace.⁶⁶

A broader gender perspective to transitional justice policy in the Balkans is missing. As this report shows, understanding of gender has been for too long focused on conflict-related sexual violence. The focus here is on institutional responses and development. A deeper analysis that looks at social and economic factors as well as at the individual level that in turn connects the different policy areas is missing.

Introducing a broader gender perspective to transitional justice would allow us to present a fuller picture and enable the design of more meaningful processes for survivors and the broader society. Under such a broader perspective women are not only seen as victims but also as shapers, as economic and social actors. A broader gender perspective would also incorporate social, psychological, cultural, as well as political and economic dimensions into reconstruction and TJ policies. It would make policies more human and better connected to real needs and thus more effective in bringing about change.

People are more than able to explain in simple terms what is wrong with their societies and what needs to change. They want jobs without needing to bribe someone, they want the best education and health for their children, they want to travel, they don't want to be ruled by war criminals and thieves who rob their country, they want to regain hope for a better future which they currently don't have, and they want assurances that conflict is not coming back. When one only looks at institutions and how to reform them without context and finding ways to listen to the people these voices cannot be heard. And voices that can reach beyond the nationalistic rhetoric are becoming fewer and fewer in the Balkans. TJ should be more about human processes and not about institutions. This would be a success.

⁶⁶ Ni Aloine, *The Oxford Handbook of Gender and Conflict*, 2018, Op. Cit, p. 48.

Conclusions

The main conclusion of this report is that a broader gender perspective to transitional justice policy in the countries of the former Yugoslavia is missing. Gender and transitional justice have been mostly limited to legally addressing conflict-related sexual violence. This has presented women as victims only. It has also narrowed down the picture TJ is able to present. It leaves out the root causes, the more structural violence that is responsible for violence against women throughout the history of the region. Leaving root causes unaddressed and focusing only on the symptoms will, however, fail in ensuring transformation and sustainable peace.

This report has tried to better understand the dynamics and forces behind why change is not possible and make suggestions on what needs to be reformed/transformed. Specifically, the report tried to show that persisting systems of impunity successfully continue to undermine accountability and redress for past crimes and any form of structural change to address gender inequalities in the different societies in the region.

The report also shows how these systems were able to gain power and points to a responsibility that is on the shoulders of external actors as well, having contributed politically and financially, willingly or unwillingly, to the growth of these structures. The status quo that thus emerged has left limited space for TJ policy that supports gender transformative processes. It has also shaped TJ policy in an apolitical institutional driven way that lacks sensitivity to context and thus limited its potential to be a driver for gender transformation.

As the report shows, the policy focused for too long too narrowly on criminal justice. Reparations with their strong empowering function (if applied well), truth seeking with the ability to identify root causes, systematic patterns of violence and guarantees of non-recurrence, which can have transformative effects in areas such as education, or tackling root causes at the individual level have lagged behind in terms of policy support.

At the moment, the international community has begun to rethink its policies, which is to be welcomed. But a lot of time has passed and the narrow approach has strengthened nationalistic and mono-ethnic ideologies in place and not challenged systems of impunity that drive gender-hostile ideologies. Participation has been more lip service than a policy priority. Women's groups continue to fight to gain access to political decision making around transitional justice. However, even when they gain access their influence is minimal or side-lined to the project domain.

According to the findings of the report, the focus of policy approaches in the region has predominantly been on the visible side of violence and has left unaddressed the more structural problems, such as economic violence or social stereotyping and sexist practices. Policy failed to address the economic dimension of how the conflict impacted women. Who has been the beneficiary of economic investment in the reconstruction phase is a question that has not been asked. Also, TJ policy has been a one-way street where responsibility has been solely put on local structures and culture. Any responsibility of the international community after years of active political and economic engagement has been simply ignored.

International policy-makers, such as the EU and the UN, remain obsessed with short-term success stories. What is left out, however, is the continued existence of deeply engrained systems of impunity that undermine women's access to justice. The consequence is that

policy has lacked and continues to lack strategic focus and vision. The grass roots vision as represented for example by local women's groups has in many case not been taken on board, both in terms of policy and financial support. This has weakened their role and impact in effecting transformative change.

The international community has also done poorly when it comes to strengthening civil society in the area of gender and transitional justice. Donors have contributed to short-sighted donor driven expert civil society that is not part of ideas around social change. But civil society, like many others, has not given up and is now reinventing itself naturally. This is especially true for feminist organisations, which have a clear vision that includes individual, social, legal and political change for women. But the civic space is limited/weakened and political support urgently needed.

Finally, an important lesson this report presents is that there is a lack of connectivity between different policy fields and a detachment of TJ policy from the needs of the people. The report finds that policy that aims to contribute to change needs to better acknowledge the centrality of local actors and recognise the complex, iterative, multi-layered, and dynamic nature of the processes of conflict and peace. Transitional justice can play an important function in this respect if it is designed to create space for dialogue that goes beyond ethnic division. Women's groups and activists have sought to do this in their work, especially at grass roots level. Their work needs be strengthened, both politically and financially.

In conclusion, gender transformation remains an aspiration rather than a reality in the region. This is not good news at a time when conservative forces are in the ascendant. This is also not good news given the current trend that political elites in the Balkans look to other "friends" outside the EU. The EU is losing ground providing limited perspective and undergoing troubling internal challenges. The new/old friends, such as Turkey and Russia, are not known for being champions in the area of gender and are even less willing to formally put gender on the agenda. New friends, such as Gulf countries and China, have mainly business interest in mind.

Impunity Watch is urging policy makers to take the lessons that are presented in this report into account when engaging with transitional justice issues in the region. Systems of impunity remained unchallenged for far too long. They promote subordination, exclusion and fear of the other. All issues gender transformative approaches seek to change. If these systems persist, they will present a real threat to stability and security in the region. The main goal of transitional justice and gender policies today is to dismantle them in order to prevent the recurrence of the disturbing picture we all have still in our minds of the 90s.

Recommendations

What follows now is a set of recommendations that seek to bring these conclusions a step further. This report shows that policy must be rethought. The current lack of a broader policy around gender equality and transitional justice for the region is alarming. Existing policies are too narrow to achieve real and sustainable change for women. The report calls for more aspirational and transformative policies. The recommendations are written in the spirit of providing incentives for such a policy change.

❖ To the international community

- **Redouble the effort to combat impunity for past and ongoing, as well as direct and structural violence against women.** Political dialogues and discussions around economic reform should be used in this respect as incentives for change.
- **Take a broader gender perspective to transitional justice that presents a more comprehensive picture of the multiple harms endured by women before, during and after the conflicts of the 90s, in particular the economic dimensions.** The perspective should be intersectional, take contextual factors into account and recognise the multi-layered complexity of conflict and peace.
- **Work together with civil society on a transformation agenda with a clear set of goals for empowering victims to become survivors.** This agenda should specifically provide policy incentives for gender sensitive reparation and truth seeking, as well as strengthening civil society and education from a gender perspective.
- **Ensure participation of women in line with Security Council Resolution 1325 in any decision making around TJ.**
- **The EU and its member states should work on implementing the EU policy framework on TJ in the region and strengthen its gender dimension.** This could include:
 - **Organise a briefing of the Working Party on Human Rights (COHOM) and Working Party on the Western Balkans Region (COWEB)** on gender equality and transitional justice in the Western Balkans, with input from the European Commission and civil society.
 - **Use bilateral human rights dialogues** and engagements with governments in the region to emphasise the importance of gender sensitive transitional justice work.
- **The European Commission should integrate reporting around gender equality and TJ in their annual progress reports as well as on reporting and monitoring in the context of the EU gender action plan II, taking into account a broader gender perspective to transitional justice.** The criteria for reporting should be developed jointly with civil society and geared towards assessing change, especially around reparations and what guarantees are in place to prevent the recurrence of violence, including around issues of social stigmatisation and psychological needs, as well as access to justice.
- **The new EU's Facility on Justice in Conflict and Transition should provide strategic policy advice on TJ and gender to EU delegations on the ground in**

the different Western Balkan countries. The advice should be developed through bottom up engagements with civil society groups.

- **The Directorate-General for Neighbourhood and Enlargement Negotiations (DG NEAR) together with the European Commission's Service for Foreign Policy Instruments should organise a consultative conference on how to strengthen civil society's transformative potential around transitional justice and gender.**
- **The UN should conduct a regional scoping study around gender sensitive programming in the area of transitional justice.** Part of the study should be a thorough and independent assessment on how investments have matched outcomes on the ground; the real change it produced for victims and survivors. Recommendation should be provided on how investments by the international community around gender reflect the current needs of victims and survivors. The results should be discussed in consultative meetings with civil society in the region.
- **Members of the international community should engage in a self-reflective process of identifying failures and lessons learned in international support around transitional justice and gender equality in the last three decades.** A multidisciplinary commission, possible under the leadership of the Council of Europe Commissioner for Human Rights, could be created to lead such a process. This would serve as a form of recognition of failures and contributions of the involvement of the international community in the post-conflict era.
- **Provide long-term funding incentives for joint civil society proposals** that are multi-disciplinary in nature and combine different spheres, including the legal, economic, social and political dimensions. Funding should be targeted and easier and accessible for a broad range of civil society, beyond capitals, with different capacities and skills and difference in size.

❖ **To governments:**

- **Dismantle gender-hostile structures that continue to undermine progress in the area of gender justice.** Take a broad approach that includes legal reckoning with the past, looking at economic violence and as well as violence at the social level and challenge in this respect patriarchal structures.
- **Significantly strengthen the participation and access of women to policy making in transitional justice processes.** In this respect strengthen efforts around transitional justice strategies that take a gender transformative approach. The elaboration should be conducted from a bottom up perspective and be inclusive and participatory in nature.
- **Provide an enabling environment for gender-sensitisation work through sensitisation programmes for the broader public that address issues of stigmatisation and sexism.** Redouble efforts to address institutional gender biases that undermine real access to justice for many women.
- **Adopt comprehensive reparation programmes that go beyond pensions schemes and recognise the multiple harm, both physical and structural, committed against women.**

- **Support cross-ethnic truth-seeking processes at the local, national and regional level that take a gender sensitive approach.**

❖ **To civil society:**

- **Call for a broader gender perspective to transitional justice that includes addressing economic, social and cultural violence against women.** Integrate the current work on war crimes more strategically in such a broader perspective.
- **Increase efforts in coordinating around TJ policy that enhances its transformative potential from a gender perspective, in particular in the area of reparations and guarantees of non-recurrence.**
- **Conduct regular multi-disciplinary exchanges around gender equality and transitional justice and move towards forming a strong and regional coalition around the topic.**
- **Develop joint policy demands around TJ and gender equality.** Organise a regional seminar to come up with a catalogue of civil society friendly funding criteria for donors.
- **For legally-oriented NGOs that work in the field of transitional justice include in their access to justice work the promotion of socio-economic rights for women.**

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