



Research Report

Keeping the Promise Addressing Impunity in the Western Balkans

May 2018

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Author

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Acknowledgements

The author wishes to acknowledge Marija Ristić from the Balkan Investigative Reporting Network (BIRN) whose guidance significantly contributed to the successful completion of this report. The research and the report also greatly benefited from the professional assistance and substantial feedback provided by Marlies Stappers. Equally, the author is thankful for the extensive background research done by Valentina Cadelo at the beginning of the process and the editorial support provided by Safi van 't Land, Matthew Collin, Emilie di Grazia.

Impunity Watch would like to express its gratitude to PAX and its staff working on the Western Balkans for their insight and assistance throughout the project. Moreover, we wish to thank all the stakeholders, including civil society actors, officials, and experts who took part in this research by sharing their experience and making recommendation for change. We are grateful to the financial support of the Ministry of Foreign Affairs of the Netherlands which was made available through our strategic partnership with PAX.

Through the results of this report, and in particular our recommendations, we hope to contribute – first and foremost – to the improvement of the situation of the countless victims that are trapped in a system of ingrained and widespread impunity that continues to haunt the Western Balkan region.

Cover Photo: A Bosnian Muslim woman mourns over a casket at the Potočari Memorial Center on 11 July 2008. Photo: EPA/FEHIM DEMIR

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Executive Summary

Almost two decades have passed since the conflict in the Western Balkans that followed the dissolution of Yugoslavia came to an end. The conflict has left in its trail countless victims and traumatised societies. The immediate aftermath of the conflict brought hope for change. The perspective of joining the EU was considered as a main driver for change. Justice for the past was part of a regional approach, spearheaded by the International Criminal Tribunal for the former Yugoslavia (ICTY). Holding war criminals accountable was considered a precondition to gain access to the EU. The region also saw significant investments by the international community in mechanisms of transitional justice (TJ), such as criminal justice, truth seeking, reparations, and institutional reform.

The purpose of this report is to take stock of where processes of dealing with the legacy of the conflict in the 1990s stand today in the Western Balkans. Its findings are sobering and should be seen as a wake-up call. 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.

Measures taken in the area of TJ have by and large failed to tackle these structures of impunity. More specifically, prosecutions are on the decline, truth-seeking is challenged by a one-sided public discourse of denial and revisionism, and reparations have been largely selective and politicised. At the institutional level, the judiciary and other oversight bodies are too weak to fulfil their function in guaranteeing the non-recurrence of violations. Civil society, as well as the media, lacks strength or is too compromised to make a difference in society. Education is segregated and history manipulated to tell nationalist narratives that go against any serious attempts to deal with responsibility for the past. The Western Balkans continues to be a battleground of conflicting narratives, in which each side claims victimhood and blames the other for past abuses. These are all indicators that are concerning and can, if not addressed, become root causes for future conflict.

Most importantly, this assessment reveals that Western Balkan states have done very poorly when it comes to victim participation in TJ processes. Victims' voices are marginalised and their rightful claims have been politicised by the different sides. This is a major shortcoming.

A key responsibility for this highly concerning trend is to be found in the failure of the international community to translate clear policy commitments in the fight against impunity into viable change on the ground. To put it in other words, interventions in the area of transitional justice lacked a clear strategy or long-term vision. For too long, the focus was on one mechanism only - criminal justice. Yet, prosecutions alone are not able to dismantle structures of impunity. Great opportunities have also been missed when it comes to the question of gender. Reforms have been to a great extent gender-blind and reproduced 'old' patterns and structures of violent and patriarchal masculinities instead of being transformative. Impunity Watch will dedicate future reporting to this topic. As for victim

participation, donors, including the EU, do not seem to have a strategic vision on victim participation in Western Balkan states in spite of various policy frameworks stipulating the need for victim centrality in TJ work, including the EU's new transitional justice policy framework (2015).

A key recommendation of the report is the urgent need to change the logic of intervention. Part of this change has to do with departing from the current belief that economic development alone will bring about change, including in the area of justice and reconciliation. The experience of the Western Balkans shows that those who benefit from economic development are to a great extent those who are drivers of structures of impunity, leaving the countless victims of the wars of the 1990s with empty hands, both economically but also in terms of justice. In order to change this dynamic and to invest in an approach that sees justice as a contributing factor to preventing future conflict, it has to be linked to other policy interventions, and this has to be done in a participatory manner, including victims and their families.

Importantly, the report recommends adopting politically-informed approaches to TJ that follow a clear strategy in fighting structures of impunity, based on the needs of victims. The potential of transitional justice mechanisms as a transformative tool need to be better used to tackle these structures of impunity. This will include the development and implementation of policies that are gender-sensitive. Civil society needs to be a key partner in identifying the way forward. Systematically including victims in the discussion on the way forward for transitional justice would keep the focus on their needs and help create space for the fight against impunity. It would also assist in counterbalancing the negative perceptions that victims have about transitional justice.

All of this is not new. The EU policy framework on TJ adopted in 2015, calls for exactly the same thing. It urges victim participation and context-specific approaches, as well as linking justice to development and security. So far, however, this commitment has not been implemented on the ground. Knowledge about the policy remains limited both inside and outside of the EU, as a result of which serious efforts need to be undertaken so that the policy becomes part of the design and implementation of the EU's support for the region.

The report also recommends that the EU's transitional justice policy should be a driving force and provide guidance within the renewed enlargement strategy for the Western Balkans, adopted by the European Commission in 2018. Ending impunity, and tackling current systems and networks that thrive and benefit from impunity on the back of victims' need for justice, should be a key priority in accession processes. To this end, this report hopes to contribute towards preventing history from repeating itself. Such an outcome would be a disaster, with repercussions going beyond the Western Balkans and shaking the foundations of the EU itself as a peace project.



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Methodology

The findings and recommendations in this report are based on an extensive interview process with a broad range of stakeholders both from within in the region of the Western Balkans and beyond. The interviews were complemented by an in-depth desk review of existing documentation on transitional justice in Western Balkan states. The website of the BIRN transitional justice network, which thoroughly and consistently monitors transitional justice processes and mechanisms in an accessible fashion, constitutes an enormous source of information.

In-country visits were conducted in the fall of 2017 to Bosnia and Herzegovina, Croatia, Kosovo, and Serbia. Marija Ristić assisted in preparing and organising the visits both substantively and logistically. Her insight and comments on this report were invaluable, for which the author would like to express his deep gratitude.

The aim of this report is to show trends and challenges in the area of transitional justice in Western Balkan states. It is a first assessment, and further in-depth work on issues mentioned in this report is needed. As such, this report should thus not be read as a final statement on the topic, but instead open doors to further work in this area. Overall, the assessment shows that the region is at a turning point and that if the past is not adequately addressed, it can again become a source of future conflict.

The report takes a context-specific and politically-informed approach to transitional justice and the fight against impunity. In doing so, it seeks to address a gap in transitional justice work in the region, which has so far been conducted primarily through technical assessments and evaluations. Throughout the report, a gender-sensitive approach is taken.

In this report, impunity is understood as a structure or culture in which people who hold positions of power abuse human rights and commit crimes or other offences without fear of consequences. The report looks at impunity in a broad sense, both as a root cause of conflict and violence, as well as a consequence of a lack of effective transitional justice interventions, which may include criminal justice, truth-seeking, reparations, and guarantees of non-recurrence.

Initial drafts of the report were shared with various experts on transitional justice in a number of Western Balkan states, both local and international.



1. Introduction

Almost two decades have passed since the conflict in the Western Balkans that followed the dissolution of Yugoslavia came to an end. The end of conflict, which caused the greatest human suffering in Europe since World War II, came with a promise of change, mainly through economic integration within the European Union (EU). Importantly, justice for past abuses and establishing the rule of law has been identified as part of this change and as an important driver of it, complementing economic growth. The International Criminal Tribunal for the former Yugoslavia (ICTY), which closed its doors at the end of 2017, stands, despite all the criticism levelled at the institution, as a symbol for the importance that justice has been assigned in the post-conflict context.

In fact, over the years, the various Western Balkan states have seen a plethora of different justice interventions by various actors, including governments, the international community and civil society. This report will try to contribute to a critical assessment of the interventions that have taken place in the area of prosecution, truth-seeking, reparation, and institutional reform. It will do so by first looking at the status of these interventions. Where does each of these interventions stand in terms of their implementation? What has been achieved? What are the challenges? Secondly, it will draw some broader lessons from what can be learned from transitional justice (TJ) interventions in Western Balkan states. Building on that, the report will draw some conclusions and propose some policy recommendations for the way forward.

Building on the assumption that adequately dealing with the past is a necessary precondition for a better future, the report seeks to provide elements for a policy framework that can contribute to moving justice questions forward in the Western Balkans as a guarantee to prevent the recurrence of violations. As such, it targets governments, civil society, donors, and the international community. The ultimate beneficiaries of this report should, however, be the countless victims that the conflict left in its wake. An important focus of this report will therefore be how to better integrate their voices when dealing with the past.

The main conclusion of the report is that things are not going well in terms of transitional justice in Western Balkan states and that urgent action is needed. The common thread throughout this report is the finding that today, 20 years after the conflict came to an end, systems of impunity are ingrained and widespread throughout the region, which undermine attempts to achieve justice, restore the rule of law and contribute to reconciliation. A climate of impunity exists, in which people who hold power abuse human rights, commit crimes, or commit other misdeeds without fear of consequences.¹ Impunity is neither a technical problem, nor merely a judicial one. It is highly political, contextual, and can be embedded in cultural practices. Accountability is its opposite. Impunity is also the result of

¹ See Impunity Watch: Strategic Plan 2017- 2021.

deeply unequal power relations, historical abuses, and elite capture of state institutions.² All of this holds true for the Western Balkans.

More specifically, “mounting ethnic divisions and polarization in the region”³ driven by nationalistic ideologies that actively promote this climate of impunity and politically thrive therein have superseded efforts to strengthen the rule of law and to deliver justice. Limited space for civil society and independent media has also negatively contributed to this stalemate. Analysts agree that the resurgence of violence cannot be excluded.

What is of serious concern is that unaddressed grievances, held hostage by these ingrained and widespread systems of impunity, can again become root causes for future conflict. In this respect, not dealing with World War II atrocities led to unspeakable violence in the 1990s. If conflict was to return to the region and its citizens, it would be a slap in the face for the “never again” slogan of the end of the 1990s when armed conflict ended in Western Balkan states.

In light of the foregoing, this report should be seen as a wake-up call. Accordingly, it suggests rethinking the way TJ support should be conducted in the Western Balkan states and argues that solutions should be found in more context-specific approaches to justice, and by linking justice to political processes that might open up some space and leverage to tackle impunity and provide justice for victims. Over the years there have been efforts in the area of transitional justice, but they have been piecemeal and have lacked a long-term strategy. As the report shows, transitional justice interventions, such as prosecutions and institutional reform, as well as reparations, have often missed the point and further entrenched rather than addressed systems of impunity.

As a way forward, civil society needs to be strengthened and better included in political discussions. Increased political support to the civil society-led Regional Commission (hereinafter RECOM initiative) within the so-called Berlin Process would be an important indication of change.⁴ The EU accession process is equally important as an incentive for reform. Yet reform should aim to be transformative at the societal level and less technical, as it currently has too narrow a focus on legal and institutional reform alone.

In 2015, the EU adopted a comprehensive policy framework on transitional justice, which applies a ‘thicker understanding’ of transitional justice support. The policy promotes a participatory approach to the EU’s transitional justice support, in which victims should be at the centre. It also calls for a context-specific combination of measures promoting truth, justice, reparations and guarantees of non-recurrence. The policy explicitly links transitional

² Impunity Watch Scoping Study, *Transitional Justice Practice: Looking Back, Moving Forward.*, May 2016, pp. 32-39, available at https://www.impunitywatch.org/docs/scoping_study_FINAL1.pdf (last visited 6 March 2018).

³ Council of Europe, Commissioner on Human Rights, Human Rights Comment, *Reconciliation Stalled in the Western Balkan States*, 21 November 2017 (hereinafter CHR, *Reconciliation Stalled in the Western Balkan States*), available at <https://www.coe.int/en/web/commissioner/-/reconciliation-stalled-in-the-western-balkans> (last visited 6 March 2018).

⁴ RECOM is a regional commission for the establishment of facts about war crimes and other serious violations of human rights committed in the former Yugoslavia from 1 January 1991 until 31 December 2001. See official website, <http://recom.link> (last visited 6 March 2018).



justice to development and sees these two interventions as mutually reinforcing each other. This commitment to TJ, which was undertaken at a high level by all EU foreign ministers, is very welcome and indeed timely. If implemented, the policy could contribute to a shift in how TJ support in Western Balkan states is currently being enforced.

So far, however, knowledge about the policy is weak within and outside the EU, and serious efforts need to be undertaken so that the policy becomes part of the design and implementation of the EU's support for the region.

The policy should also be a driving force and provide guidance within the renewed enlargement strategy for the Western Balkans, adopted by the European Commission in 2018.⁵ Ending impunity, and tackling current systems and networks that thrive and benefit from impunity on the back of victims' need for justice, should be a key priority in accession processes. To this end, this report hopes to contribute towards preventing history from repeating itself, as such an outcome would be a disaster, with repercussions going beyond the Western Balkans and shaking the foundations of the EU itself as a peace project.

⁵ See comment by Marlies Stappers and Thomas Unger, *The EU's Balkan Strategy Misses Chance to Tackle Past Injustice*, 7 February 2018 (hereinafter Stappers and Unger, *The EU's Balkan Strategy Misses Chance to Tackle Past Injustice*), available at <http://www.balkaninsight.com/en/article/eu-s-balkans-strategy-doesn-t-sufficiently-tackle-past-injustices-02-07-2018> (last visited 6 March 2018).

2. Where do transitional justice interventions stand?

In order to assess where transitional justice interventions stand today in Western Balkan states, we need to look at the context first. Overall, space is more limited today than it used to be for the implementation of transitional justice mechanisms, such as prosecutions for war crimes, reparations for victims, truth-seeking efforts, and institutional reforms. According to interviews conducted for this report, space for transitional justice began to shrink in the mid-2000s. The reasons for this are manifold. They include, but are not limited to:

1. Reconciliation between different groups and countries has not taken place. Conflicting narratives of responsibility and victimhood stand in direct contrast with one another, no consensus has been reached on the past, and each side blames the other for violations conducted during the hostilities of the 1990s. Nationalist ideologies have, as in other parts of the world, had a renaissance as a legitimate idea for how to conduct state affairs. Behind these ideologies stand strong informal networks and groups that exercise power and influence and thrive in systems of widespread impunity.
2. The institutional set-up, including the judiciary, remains weak and subject to political interference. Corruption and a system of clientelism are generally hampering genuine reform efforts.
3. Related to the second point, civil society has very limited space and support to move the justice agenda forward. Nor has it been included in a meaningful way in ongoing political processes and discussions. Donor support has contributed to dependencies and competition around funding among the NGO community. This has undermined efforts to create civil society networks. NGOs working on dealing with the past have difficulties in establishing trust within the local population as a force for change. Some of this also has to do with a lack of deep-rooted civil society tradition in the region.
4. The conflict had a regional dimension and violations were committed across borders. The dissolution of the former Yugoslavia has, however, brought about new states. New solutions, with some exceptions, are sought mainly at the national level rather than collaboratively between states.
5. International priorities have changed over the years, with a new trend moving away from justice towards stabilisation through economic cooperation. TJ is not a real priority in daily political and diplomatic engagements, despite a clear policy priority enshrined in the EU's TJ policy (2015) and some selective references in the European Council's new Western Balkans Strategy. Since Croatia's accession to the EU the dynamics have also changed, as different standards are applicable to member and non-member states. With the closing of the ICTY, the international community has also lost the political leverage that was previously used to open up some space for justice interventions. In fact, among those who have been interviewed for this

report, there is a general feeling that the international community has abandoned the issue altogether.

6. The economic situation in the region is not looking rosy, with unemployment rates going up in nearly all Western Balkan states. Youth unemployment rates are particularly alarming. Young people are more likely to become radicalised, particularly since they have only ever known a climate of ethnic conflict. The consequences of the financial crisis were hard felt in Western Balkan states, and have also led to increased support for nationalistic ideals, which promise 'new greatness' and undermines democratic structures.
7. International human rights monitoring mechanisms, such as the European Court of Human Rights (ECtHR) and the UN Human Rights Council mechanisms, as well as human rights treaty bodies, don't have a real impact in opening up space for reform; their recommendations and observations are systematically ignored and go unimplemented.

These contextual factors have a strong bearing on the implementation of transitional justice and are thus indicative of the very meagre results in the 20-year period following the end of the conflict. Throughout the region, transitional justice mechanisms are struggling to counter powerful structures of impunity. Throughout the region too, systems of impunity are supported by powerful groups and networks that are composed to a great extent of drivers of the conflict in the 1990s. These systems are one of the reasons for a lack of progress in the area of transitional justice. In particular, criminal networks that arose out of the conflict and linger on today fatally affect TJ processes and institutional reform. In this system, victims are used as a political tool and kept hostage to the past. Victims are still awaiting adequate redress for the harm they have suffered. The following overview on where the different transitional justice initiatives stand will show that impunity for serious crimes perpetrated during the 1990s continues to be widespread in the Western Balkans.

Criminal Justice

Summary: Over the past 20 years, criminal justice was the primary focus of most of the programmes related to transitional justice in the Western Balkans. Despite heavy investments, the outcome has been relatively modest. One main shortcoming is the lack of strategic approaches in the prosecution of war criminals, in particular at the domestic level; there was and is no clarity about what the function of these prosecutions should be. The approach has so far been rather piecemeal, without dismantling powerful structures of impunity. Given the huge number of crimes committed during the wars in the 1990s, it will take many more years before we will begin to see the end of the tunnel. With the closing of the ICTY, the main driver for criminal justice in the Western Balkans is gone; it is now up to the states themselves to continue the prosecutions. Some progress, although on a limited scale, can be reported in the area of addressing cases of sexual violence, especially in Bosnia and Herzegovina. However, other countries in the region still fall short in adequately addressing this issue through their national court systems. While Bosnia and Herzegovina's progress is to be welcomed, a gender approach to dealing with the past should go further, however, and should not be reduced to seeing women only as victims of rape. A meaningful gender approach after conflict should aim to better understand the effect mass crimes have on gender. It should look at the role of criminal justice in contributing to changing engrained structures of marginalisation and discrimination that are based on very conservative understandings of the role of gender in society. To date, such an approach has not been adopted in any of the Western Balkan states. Better integrating victim-centred approaches in criminal justice processes should be a priority. Currently, the region is faced with a lack of victim-witness support and inadequate domestic legislation to support victims, including in the area of cases of sexual violence, in which the burden of proof is often placed on the victim, which, in practice, often leads to re-traumatisation (see below on reparations). A victim-centred approach would also require criminal justice to be linked with other transitional justice mechanisms, including reparations and rehabilitation, as well as truth-seeking and the reform of institutions. Overall, given the unfavourable contextual factors, it is to be predicted that criminal justice efforts will continue to decline, leaving many victims with unfulfilled hopes that were raised over the years by focusing on criminal justice as a means to deal with the past.

Despite the establishment of the ICTY in 1993, most Western Balkan states also established and restructured local chambers within their national courts following the end of conflict for the purpose of prosecuting war crimes. In some cases, this was done through hybrid courts (e.g. in Bosnia and Herzegovina, Kosovo) while in others the chambers were composed of local judges and prosecutors (e.g. in Serbia). The aim of these chambers was to prosecute



lower-level perpetrators, as well as the higher- and middle-ranking officers that the ICTY did not indict. In practice, however, these chambers mostly focused on crimes perpetrated by foot soldiers. More complex cases, including those relating to commanders, have not been prosecuted. Overall, prosecutions within the region have not been very strategic, as a result of which courts and tribunals have struggled to conduct thorough outreach to explain their mission to the broader public. In most cases, they have failed to dismantle wider structures of impunity.

Prosecutorial strategies to tackle war crimes cases

In the case of Bosnia and Herzegovina, a National Strategy for War Crimes Prosecution was adopted in 2008, which sought to prioritise cases focusing on large-scale crimes and high- and middle-ranking perpetrators.⁶ However, the lack of implementation of the strategy was often met with criticism from the Office of the Prosecutor at the ICTY, international organisations, as well as from governments and civil society.⁷ The strategy also failed to ensure, in practice, the desired victim-centred approaches. Moreover, victim support and protection are still lacking. Serbia adopted a very broad National Strategy for War Crimes Prosecution in 2016 (the national strategy on war crimes for 2016-2020), which envisaged the adoption of a separate prosecutorial strategy to deal with the prioritisation of cases, but this document remains in the draft stage.⁸ The prosecutor's strategy is meant to expand on

⁶ See the website of the Ministry of Justice of Bosnia and Herzegovina, <http://www.mpr.gov.ba/aktuelnosti/vijesti/default.aspx?id=573&langTag=en-US> (last visited 6 March 2018). For an assessment see the latest OSCE report by independent experts: *Processing of War Crimes at the State Level in Bosnia and Herzegovina*, 16 June 2016 (hereinafter OSCE report 2016), available at <http://www.osce.org/bih/247221> (last visited 6 March 2018). A summary of the report and a response from Bosnian state institutions is available at <http://www.balkaninsight.com/en/article/a-new-conflict-between-osce-and-bosnian-state-prosecution-06-16-2016>.

⁷ *Ibid.* See also an overview of War Crimes Processing from 2005 to 2010, May 2011, (hereinafter OSCE Report 2011), available at http://www.oscebih.org/documents/osce_bih_doc_2011051909500706eng.pdf (last visited 6 March 2018); see also European Commission, 2011 Progress Report on BiH, doc. SEC(2011) 1206 of 12 October 2011, pp. 12-13, Committee against Torture (CAT), *Concluding Observations on BiH*, doc.CAT/C/BH/CO/2-5 of 19 November of 2010, para. 12; Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), *Concluding Observations on BiH*, UN doc. CEDAW/C/BH/CO/4-5 of 19 July 2013, para. 9.a; Foreign and Commonwealth Office, *Research and analysis, Bosnia and Herzegovina: Tackling War Crimes*, 15 January 2014, available at <https://www.gov.uk/government/publications/bosnia-and-herzegovina-tackling-war-crimes> (last visited 6 March 2018); *General Allegation on the situation in Bosnia and Herzegovina to the Special Rapporteur on Truth, Justice, Reparations and Guarantees of Non-recurrence*, submitted, TRIAL (Track Impunity Always), Women's International League for Peace and Freedom, The Association of Genocide Victims and Witnesses, The Association Movement of Mothers of Srebrenica and Žepa Enclaves, February 2014, (hereinafter TRIAL General Allegation), p. 15, available at https://trialinternational.org/wp-content/uploads/2016/05/TRIAL_BiH_GA_SRTJ_Feb2014.pdf (last visited 6 March 2018).

⁸ The National Strategy for the prosecution of war crimes, January 2008, based on Article 45, paragraph 1 of the Law on Government ("Official Gazette of RS", no. 55/05-correction, 101/07, 65/08, 16/11, 68 / 12- CC, 7/14 - CC and 44/14), available at

the national strategy on war crimes, and to clearly outline what the war crimes prosecution office will do. Its adoption is also envisioned by Serbia's 2016 action plan for Chapter 23 in its negotiations to join the EU – the chapter relating to the judiciary and fundamental rights. According to two prominent Serbian NGOs, however, the draft suggests a lack of clarity about solving key problems that have hampered war crimes prosecutions in Serbia.⁹ In particular, criteria for the prioritisation of cases, indicators of success and timelines are missing in the draft. The lack of transparency of the process around the adoption of the prosecutorial strategy is another concern.

Regional trends in war crimes prosecution

In recent years, throughout the region, the number of indictments has stagnated, if not decreased.¹⁰ There are various reasons for this. In the case of Croatia, pressure from the EU to prosecute war crimes disappeared when the country joined the Union. In Serbia, focus has shifted from war crimes prosecution to political dialogue between Belgrade and Pristina. There was no chief war crimes prosecutor appointed for more than a year, and on top of that there is a lack of capacity. In Bosnia and Herzegovina, the quality of indictments is low, especially outside the Sarajevo-based, state-level Court of Bosnia and Herzegovina, and there have been problematic appointments of judges and prosecutors in the past. The National Strategy for War Crimes Prosecution was adopted, but as discussed, its implementation has been found wanting.¹¹ Attempts have been made by politicians in the Republika Srpska (RS) to undermine the work of the state-level court, but have failed thus far.¹² Issues connected with the application of the new criminal code have led to retrials that have had a negatively impact on the perception of the judiciary in Bosnia and Herzegovina.¹³

http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document_en/2016-05/p_nac_stragetija_eng.PDF. See criticism of the draft by human rights groups, available at <http://www.balkaninsight.com/en/article/serbia-s-war-crimes-strategy-seriously-flawed-ngos-say-03-16-2018> (last visited 25 March 2018). For monitoring on War Crimes Trials in Serbia see website of Humanitarian Law Centre, available at <http://www.hlc-rdc.org/?cat=250&lang=de>
⁹ See reporting by BIRN, available at <http://www.balkaninsight.com/en/article/serbia-s-war-crimes-strategy-seriously-flawed-ngos-say-03-16-2018> (last visited 25 March 2018).

¹⁰ The Balkan Investigative Reporting Network (BIRN) is closely following developments in war crimes prosecutions in the region, available at <http://www.balkaninsight.com/en/page/balkan-transitional-justice-home> (last visited on 6 March 2018).

¹¹ See OSCE report 2016, *supra* note 6.

¹² See BIRN's article *Republika Srpska Postpones State Judiciary Referendum*, available at <http://www.balkaninsight.com/en/article/republika-srpska-postpones-state-judiciary-referendum-11-07-2017>, (last visited on 25 March 2018).

¹³ See discussions around the *Maktouf and Damjanović case*. In July 2013 the ECtHR ruled that, had they been tried under the 1976 Criminal Code, in force at the time they committed their crimes, rather than the 2003 Code, Maktouf and Damjanovic may have received lighter sentences. Following a decision by the BiH Constitutional Court in October, aimed at implementing this ruling, the BiH State Court released Damjanovic and several other convicted war criminals from jail (Maktouf had already served his sentence). For the judgement see European Court of Human Rights, *Maktouf and Damjanović v. Bosnia and Herzegovina*, Grand Chamber judgment, 18 July 2013 (applications no. 2312/98 and 34179/08). See also, AFP, *Hundreds of Bosnian War Criminals to be Released and Retried*, Journal, 7 December 2013, available at www.thejournal.ie/bosnia-war-criminals-released-



In Kosovo, the international community took the lead in war crimes prosecutions for many years. Recently, the European Union Rule of Law Mission in Kosovo (EULEX) has down-scaled its activities in this respect. As of summer 2018, the task of prosecuting war criminals will be entirely left to local prosecutors, who don't have capacity to deal with the issue. Relations are also burdened by the lack of regional cooperation – especially over the exchange of evidence and extradition. The UN Mission in Kosovo (UNMIK) and EULEX often prioritised investigations into crimes committed by Serbian forces, but these cases rarely ended up in court due to the lack of cooperation between Serbia and Kosovo. UNMIK has issued more than 50 arrest warrants via Interpol upon which Serbia has refused to act.

As a result, the handful of cases that were prosecuted focused on minor incidents, on selected/disconnected cases of torture, or on low-ranking officers of either Serbian forces or the Kosovo Liberation Army (KLA).¹⁴ The newly-established Kosovo Specialist Chambers are supposed to change this trend, but to date face serious opposition from former KLA members who have now become senior politicians.¹⁵ In respect of these individuals, issues around the intimidation of witnesses and victims also remain.¹⁶

Prosecution of cases of sexual violence

Some progress can be reported with regard to prosecutions for sexual violence. During its mandate, the ICTY issued landmark verdicts related to sexual violence perpetrated in times of armed conflict. Out of a total of 161 people indicted by the ICTY, 93 cases contained a sexual element.¹⁷ Efforts have been made to implement some of the international standards set by the ICTY, especially by local courts in Bosnia and Herzegovina. Out of a total of 675 conflict-related cases, the Prosecutor's Office of Bosnia and Herzegovina has thus far dealt with 174 cases that involved charges of sexual violence. An OSCE report published in 2017 welcomed the fact that the Bosnian judiciary has made more effort to prosecute cases of wartime sexual violence over the past three years.¹⁸ From 2014 to 2016, about a third of war

[1209704-Dec2013](#) (last visited 25 March 2018). See also blog entry by Maja Kapetanovic, *The Impact of the ECtHR Ruling in the Case of Maktouf and Damjanovic v Bosnia and Herzegovina: Transitional Justice in B-H*, 5 March 2015, available at <http://www.lancaster.ac.uk/law/blogs/staff/impact-of-the-ecthr-ruling-in-maktouf-and-damjanovic-v-bosnia--herzegovina/> (last visited 6 March 2018). See also TRIAL General Allegation, *supra* note 7, p. 16.

¹⁴ See Humanitarian Law Centre Kosovo report, *As Time Passes, Justice for WAR CRIMES fades*, available at <https://hlc-kosovo.org/wp-content/uploads/2017/03/As-Time-Passes-Justice-for-WAR-CRIMES-fades-Report.pdf> (last visited 25 March 2018).

¹⁵ See New York Times, *World's Eyes on Kosovo Amid Push to Halt War Crimes Court*, 13 January 2018, available at <https://mobile.nytimes.com/2018/01/13/world/europe/kosovo-war-crimes-court.html?referer=https://t.co/zmbbk1hfhj?amp=1> (last visited 6 March 2018).

¹⁶ Amnesty International Report, *"Wounds that burn or souls": compensation for Kosovo's wartime rape survivors, but still no justice*, 13 December 2017, (hereinafter Amnesty International Kosovo 2017 report), p. 29, available at <https://www.amnesty.org/en/documents/eur70/7558/2017/en/> (last visited 6 March 2017).

¹⁷ See BIRN's interview with Michelle Jarvis, deputy prosecutor at the ICTY, *Wartime Sexual Crimes: A Challenge for Balkan Prosecutors*, available at <http://www.balkaninsight.com/en/article/wartime-sexual-crimes-a-challenge-for-balkan-prosecutors-06-22-2017> (last visited 25 March 2018).

¹⁸ OSCE Report, *Towards Justice for Survivors of Conflict-Related Sexual Violence in Bosnia and Herzegovina: Progress before Courts in BiH 2014–2016*, June 2017, available at

crimes cases before Bosnian courts involved sexual violence, in comparison to only a quarter of cases in the period from 2011 to 2013, the report said.

Challenges remain, however, most notably that the number of survivors of cases of sexual violence is still unknown. Further challenges include the lack of victim-witness support and protection, which is crucial in sexual violence cases, considering that the key evidence is victims' testimonies.¹⁹ An ongoing pattern of intimidation during trial leads to victims being re-traumatised, in addition to a continuing context of stigmatisation of rape victims in society. Moreover, the definition of rape in domestic legislation is not in line with international standards, as the case of Bosnia and Herzegovina shows.²⁰ The concept of coercive circumstances is often neglected by national courts, putting the burden of proof on the victim, including in relation to the question of consent, which further leads to re-traumatisation.

Other courts in the region have been even less successful. In Serbia, the Special War Crimes Chamber in Belgrade has concluded merely two trials for rape relating to the conflict over Kosovo. Both cases were brought against former KLA members; only one resulted in a conviction.²¹ In Kosovo itself, only a handful of prosecutions for wartime rape have been completed; each resulted in an acquittal after appeal, because courts found there was insufficient evidence to identify the alleged perpetrator.²²

While a focus on prosecuting cases of sexual violence, in particular cases of rape, is to be welcomed, it has to be placed in the broader perspective of gender and conflict. A meaningful gender approach to transitional justice aims to change engrained structures of marginalisation and discrimination that are based on conservative understandings of the role of gender in society, as well as the fact that conflict affects gender differently. Such an understanding has so far not been put in place in any of the Western Balkan states.

Victim participation and the role of civil society

Civil society, both locally and internationally, played a major role in lobbying for and supporting criminal justice processes in Western Balkan states. Some victims and civil society organisations (CSOs) also focused their work on the documentation of crimes and providing information for prosecution to both local and international courts. Victim organisations and CSOs also provided support to witnesses before local courts. What is striking, however, is that in the last 20 years there has been no focus on victims'

<https://www.osce.org/mission-to-bosnia-and-herzegovina/324131?download=true> (last visited on 6 March 2018). See also BIRN reporting: <http://www.balkaninsight.com/en/article/osce-bosnia-boosts-wartime-sexual-violence-prosecutions-06-21-2017/1440/4> (last visited 25 March 2018).

¹⁹ See Lejla Hadzimesic (2018), *Consequences of Conflict- Related Sexual Violence on Post Conflict Society, Case Study of Reparations in Bosnia and Herzegovina*, in Fionnuala Ní Aoláin, Naomi Cahn, Dina Francis Haynes, and Nahla Valji (eds.), *The Oxford Handbook of Gender and Conflict*, (hereinafter Hadzimesic in *The Oxford Handbook of Gender and Conflict*), p. 515,

²⁰ *Ibid.*

²¹ See Amnesty International Kosovo 2017 report, *supra* note 16, p. 7.

²² *Ibid.*, p. 16.



participation in criminal trials. Most of the victims participated in trials as witnesses, and they were supported in most of the cases through victims' and witnesses' units.²³ In cases for war crimes before the Serbian War Crimes Chambers, victims had their own victims' council, which could represent them during the course of the trial. The Kosovo Specialist Chambers in The Hague will have a separate victims' unit, and reparations are envisaged as part of the proceedings.²⁴ In a few cases in recent years, the Court of Bosnia and Herzegovina has also awarded reparations as part of criminal proceedings. Yet, overall, victim participation has been piecemeal and victims have been seen as passive observers rather than as empowered agents that are able to make a claim in justice processes. More analysis is needed to look at the issue of victims' participation in judicial processes in Western Balkan states.

The ICTY legacy

As has been stated, the ICTY has been the dominant driver for criminal justice in the Western Balkans. Its overall impact is difficult to assess.²⁵ It had its successes, as well as its limitations. Most importantly, it provided space and an incentive to pursue criminal justice. In doing so, it nevertheless failed to address the root causes of the violations, including nationalist ideologies. Some argue that this was not its function. It had, however, limited results in dismantling structures of impunity, which continue to prevail. As the interviews revealed, opinions about the ICTY are also divided among victims and CSOs; some victims' associations claim that anything that has been achieved in the area of TJ is due to the work of the ICTY, while others claim that the ICTY remained closed to the general public, that it had poor outreach, and that some verdicts were problematic and became important only when they supported the dominant narratives of the state from which the defendants originated. Perception studies show that local populations continue to perceive the ICTY as "foreign" or "imposed"; in addition, they also deny past atrocities by their own respective group.²⁶ The negative perception of the ICTY, which is exploited by nationalist politicians, also has a detrimental impact on other war crimes prosecutions, both domestically and internationally.

The recently established UN Mechanism for International Criminal Tribunals (MICT), which is mandated to, *inter alia*, finish the remaining ICTY cases, will also have two additional functions: (i) to assist national jurisdictions in their own war crime trials and (ii) to preserve and manage the ICTY's archives. It remains unclear how the latter will be best used to serve justice and reconciliation. When it comes to the ICTY's archives, copies of the archives

²³ See, for Bosnia and Herzegovina, OSCE Report 2011, *supra* note 7, p. 39.

²⁴ See BIRN's article, *Bosnian War Rape Victims Struggle for Compensation*, available at <http://www.balkaninsight.com/en/article/bosnian-war-rape-victims-struggle-for-compensation-09-09-2016> (last visited 25 March 2018).

²⁵ See Diane Orentlicher, *Some Kind of Justice: The ICTY's Impact in Bosnia and Serbia*, forthcoming with Oxford University Press in May 2018.

²⁶ See Belgrade Centre for Human Rights perception studies in Bosnia and Herzegovina, Croatia and Serbia, available at <http://www.bgcentar.org.rs/bgcentar/eng-lat/citizens-perceptions-of-human-rights-law-and-practice/stavovi-prema-ratnim-zlocinima-haskom-tribunalu-domacem-pravosuđu-zaradne-zlocine/> (last visited 25 March 2018).

should be placed in information centres in Belgrade, Zagreb, and Sarajevo. However, to date, plans have only advanced for a Bosnian information centre, although it is not clear when this will become operational.

Another contemporary issue is that individuals convicted by the ICTY, who return to the region upon having served their sentence, are being welcomed as war heroes by their own communities.²⁷ Moreover, academia and practitioners have so far neglected the question of the rehabilitation of perpetrators of international crimes as a potential issue for reconciliation in the region. When the ICTY was established, there was no vision within the international community about what would happen once the perpetrators served their sentences.²⁸ As was noted by the ICTY prosecutor, after serving their sentences, convicted war criminals continue to be seen by many as heroes, while victims and survivors are ignored and dismissed. In Bosnia and Herzegovina, convicted war criminals hold public posts, while in Croatia and Serbia they are part of political parties and actively participate in public life.²⁹

All of this shows the need for a reinvigorated effort to integrate victim-centred approaches in criminal justice efforts, most notably through strengthening victim participation and protection. Western Balkan states need to urgently bring domestic legislation in accordance with international standards in the area of victim support during trials, including shifting the burden of proof away from the victim, especially in sexual violence cases, and ensuring rehabilitation of the victim through psycho-social support and reparation. Taking a victim-centred approach will also address the multiple justice needs that victims might have through linking criminal justice, which plays an important but limited role, to other transitional justice mechanisms, such as reparations, memorialisation efforts and acknowledgment, truth-seeking, and institutional reform. As will be shown, however, the lack of progress in these areas offers little hope for change.

²⁷ See Center for International Criminal Justice, VU Amsterdam project *When Justice is Done*, available at <http://www.whenjusticeisdone.org/index.php/literature/publications-wjid-project> (last visited 25 March 2018).

²⁸ For example, the Dayton Accords do not provide for such a long-term vision.

Article IX: General Provisions

1. No one who is serving a sentence imposed by the International Criminal Tribunal for the Former Yugoslavia, and no person who is under indictment by the Tribunal and who has failed to comply with an order to appear before the Tribunal, may stand as a candidate or hold any appointed, elected, or other public office in Bosnia and Herzegovina.

²⁹ See reporting by BIRN, <http://www.balkaninsight.com/en/article/balkan-war-crime-suspects-maintain-political-influence-12-02-2016> (last visited 6 March 2018).



Truth-seeking

Summary: Truth-seeking and establishing the facts about past abuses has been one of the strategic focus areas of transitional justice in Western Balkan states. Civil society groups, both at the national and regional level, are the sole drivers for these initiatives. An impressive amount of documentation has been amassed, spearheaded by efforts to collect the names of those who were killed. NGO-driven truth-seeking also remains the most innovative area of transitional justice in the Western Balkans. Unfortunately, however, funding is on the decline. With the exception in the area of missing persons, where laws and official entities have been established at the national and regional level, grassroots work has not yet been translated into officially-sanctioned truth-seeking. This is a major shortcoming. Current attempts by the civil society coalition garnering political momentum for the establishment of RECOM need to be supported by governments in the region, as well as the international community. Efforts by civil society to get political support should continue to be inclusive and participatory, and not lose sight of the importance of local grassroots ownership and support. Given the rise of nationalist ideologies and ingrained systems of impunity in the region, truth-seeking as a bulwark against revisionism and a means to combatting denial continues to be a key area where support is of utmost importance.

Fact-finding and truth-seeking efforts have been used in an inconsistent manner in all Western Balkan states. In the early days after the conflict, truth-seeking was seen by some, including the ICTY, as being in competition with criminal justice processes. This perception had a negative impact and slowed down truth-seeking processes. Work in this area is mainly done by civil society actors, with the exception of the issue of missing persons (see below). No official truth commission has been successfully established in any of the Western Balkan states. Attempts to establish national truth commissions in Bosnia and Herzegovina or Serbia have so far failed. Recently, discussions about the establishment of a national truth commission are taking place in Kosovo, as part of an initiative triggered by President Thaci.³⁰ Nevertheless, identity politics and the appropriation of the post-conflict transition in Kosovo by nationalist elites have so far undermined societal prospects for telling and seeking the truth about the past in the country. It remains to be seen whether this initiative to establish a truth commission is genuine.

³⁰ See reporting by BIRN, <http://www.balkaninsight.com/en/article/kosovo-s-president-with-an-initiative-of-reconciliation-02-13-2017> (last visited 6 March 2018).

Civil society initiatives

Over the years, the civil society-led idea of a regional commission (RECOM initiative) has struggled to gain political support from officials in the region.³¹ A draft statute exists, but political leaders on all sides have yet to commit definitively to implementing this innovative idea. The RECOM initiative is currently conducting intensive outreach within the so-called Berlin Process, with the aim of securing broad political support at the Western Balkans summit to take place in London in July 2018.³² The initiators of RECOM argue that stability and security in Western Balkan states is impossible without reconciliation.³³ To establish facts about the violations of the past will contribute to facing denial and lead to reconciliation, they say. Critics say that the initiative has lost touch with people on the ground. The latter were initially the strong point of RECOM, which conducted inclusive consultations, giving victims from all sides a voice, and contributing to moving beyond seeing the past through a one-sided ethnic lens.

There have been a series of very innovative truth-seeking efforts by civil society at the national level, including the Bosnian Book of the Dead³⁴ and the Kosovo Memory Book.³⁵ Both efforts focused on establishing lists of those who were killed during the war and contributed immensely to undermining attempts to manipulate these numbers for nationalist purposes. Currently, Dokumenta and the Humanitarian Law Centre (HLC) are composing a similar list of losses for Croatia.

Reduced funding, however, has had a negative impact on organisations that work on bottom-up initiatives that support victims and survivors, on memory and documentation.³⁶ This decline results in grassroots NGOs being excluded because the remaining grants require civil society organisations to have a more professionalised and sophisticated engagement, infrastructure, and capacity. This has been amplified by the presence of the EU, whose various funding schemes far outstrip all other major donors and changed the funding landscape significantly.³⁷ This is a worrying trend and one which, if it continues, will play into the hands of those who oppose any serious attempts to deal with the past and seek to maintain a system of impunity that is based on narratives that deny and/or manipulate facts

³¹ For more information on RECOM, see the official website, available at <http://recom.link> (last visited 6 March 2018).

³² Latest reports show some signs of optimism, see <http://www.balkaninsight.com/en/article/recom-announces-state-forming-agreement-soon-01-29-2018> (last visited 6 March 2018).

³³ The Coalition for RECOM, *Reconciliation through the Berlin Process: The Role of RECOM*, November 2017, available at <http://wb-csf.eu/wp-content/uploads/2017/12/Reconciliation-through-the-Berlin-Process-The-role-of-RECOM.pdf> (last visited 6 March 2018).

³⁴ For more information see the website of Humanitarian Law Center, available at <http://www.hlc-rdc.org/?p=22376&lang=de> (last visited 6 March 2016).

³⁵ *Ibid.*

³⁶ Christalla Yakinthou (2018) *Fighting Windmills, Ignoring Dragons*, in Paige Arthur and Christalla Yakinthou (eds.), *Transitional Justice, International Assistance, and Civil Society: Missed Connections*, pp. 52-85 (hereinafter Yakinthou, *Fighting Windmills*); see also 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, (hereinafter Kostovicova, *Civil society and reconciliation in the Western Balkans: great expectations?*), pp. 101-109.

³⁷ *Ibid.*



about past crimes. Strong, grassroots civil society networks that work on building a narrative of the past based on facts are the best guarantee of fighting impunity and preventing the recurrence of violent conflict in the future.

Focus on the missing

From very early on, there has been a clear focus in Western Balkan states on conducting fact-finding about the missing. A key organisation in this respect remains the [International Commission for Missing Persons \(ICMP\)](#), which thus far has managed to find around 70 per cent of all missing persons from the conflict in the 1990s. Missing persons remain a highly political and divisive issue, and the various sides claim exclusive victimhood. Most of ICMP's work is done in cooperation with local institutions and victims' associations; one of the biggest achievements is the creation of a central record of missing persons (23,000 people verified, 8,000 still to be verified).³⁸

There has been additional advocacy by civil society for strengthening the legal framework on missing persons³⁹ and for the support of the regional coalition of the organisation dealing with the missing (the Regional Coordination of Family Associations of Missing Persons from the Former Yugoslavia). The coalition is a key regional mechanism but, according to commentators, faces many challenges, including the political sensitivity of the issue, the group's vulnerability to ethnic point-scoring, and a general lack of funding, which limits both support and activities, impeding its ability to conduct its business and attract younger members.⁴⁰ Victims' associations and CSOs also point out that recommendations coming from the Council of Europe (CoE) or the UN are often ignored by national and local institutions.

A recent standstill in the area of missing persons has also been reported by the CoE, which points out that "the successful conclusion of this process is hindered by the lack of political will and by inadequate financial and human resources for exhumations and necessary forensic work".⁴¹ Moreover, with the passage of time, potential witnesses who could provide information about mass graves die or become reluctant to testify. In recent years, several important mass graves have been found in, among other places, Tomašica and Korićani Cliffs (Bosnia and Herzegovina) and in Rudnica (Serbia). Nonetheless, in the absence of a genuine political dialogue at the regional level and without the opening of all military and police archives that may hold important information about missing persons, there will be little or

³⁸ See the latest reporting by BIRN, <http://www.balkaninsight.com/en/article/missing-persons-from-yugoslav-wars-list-to-be-compiled-12-08-2017#.Wiq9uYOlp8U.twitter> (last visited 6 March 2018). See also ICMP, *Western Balkans Regional Meeting Launches Database of Active Missing Persons Cases From the Armed Conflicts in the Former Yugoslavia*, available at <https://www.icmp.int/flash-news/western-balkans-regional-meeting-launches-database-of-active-missing-persons-cases-from-the-armed-conflicts-in-the-former-yugoslavia/> (last visited 25 March 2018).

³⁹ TRIAL General Allegation, *supra* note 7, p. 11. For Bosnia, a law on missing persons has existed since 2004, but it is not being adequately implemented. The law is available at <https://www.icmp.int/wp-content/uploads/2014/08/law-on-missing-persons.pdf> (last visited 25 March 2018).

⁴⁰ Yakinthou, *Fighting Windmills*, *supra* note 36, p. 80.

⁴¹ CHR, 'Reconciliation Stalled in the Western Balkan States', *supra* note 3.

no progress in this area.⁴² In light of the foregoing, the issue of missing persons is in need of reinvigorated action.

⁴² *Ibid.*



Reparations

Summary: Reparations have received the least attention of all TJ processes in Western Balkan states to date. Where they exist, they are highly selective and based on ethnic considerations. This leads to a situation in which reparation programmes for civilian victims of the wars are almost non-existent as preference is given to supporting war veterans. Instead of being used to recognize that someone has been the victim of a human rights violation, reparations are systematically used in a manner by which they are dependent on whether or not an individual belongs to a certain ethnic group. Reparations today in the Western Balkans contribute more to further ethnic division than to reconciliation among the different groups. The legal framework for reparations is also weak and in need of reform throughout the Western Balkans. Victims of sexual violence and torture have largely been neglected so far, as has a broader gender focus that seeks to be transformative and not simply replicate ‘old’ patterns of discrimination and marginalisation. Maintaining the current status quo risks creating anger and undermining the goal of preventing the recurrence of violations in the future. The lack of progress in the area of reparations, which is the most relevant for victims, is clear evidence of the power that systems of impunity have in Western Balkan states to undermine progress in the area of transitional justice.

Reparations for the countless victims of the conflict in the Balkans in 1990s are an area where the gap between what ought to be done and what is being done on the ground is the largest. As such, reparations are used as a political tool to maintain divisions along ethnic lines; one might even say they constitute a continuation of war through other means. Programmes exist, but as the CoE has stated, the authorities’ approach is ‘piecemeal”, as comprehensive reparation mechanisms have yet to be established. To date, war veterans have obtained the lion’s share of reparations in Western Balkan states. As a result, reparation programmes for civilian victims of the war are almost non-existent. When they do exist, these programmes are highly selective, not implemented, or victims have to go through lengthy legal proceedings with no assurance of success. In sum, instead of contributing to reconciliation by recognising that someone has been the victim of a human rights violation, in Western Balkan states reparations, which are contingent on membership of a particular ethnic group, are systematically used as a divisive measure to ingrain ethnic division.

The drivers of this selective approach to reparations are nationalistic groups and networks that benefit politically from maintaining ethnic divisions and exclusionary policies. Keeping such a system in place is clearly contrary to the vision of combating impunity. It also risks further igniting anger among communities and undermines the goal of preventing the recurrence of violations in the future.

Domestic processes: Taking stock

In Bosnia and Herzegovina, victims' groups have been trying for years to get legislation passed for victims of torture, but it is being blocked by political parties from the Republika Srpska who claim that such a law would be "discriminatory" against Bosnian Serbs.⁴³ The draft strategy on transitional justice, which was finalised in 2011 and presented to parliament in 2012, has yet to be adopted. The strategy envisioned a range of measures addressing reparations, institutional reform, and truth-telling. Despite a clear policy commitment, conflict-related sexual violence remains a sensitive political issue in Bosnia, with slow progress in establishing a comprehensive support system for survivors. The absence of services extends to children born out of wartime rape, who face particular risk of stigma, abandonment, rejection and low socio-economic status. The stigmatisation and economic marginalisation of rape survivors themselves remains a concern. While the drafting of a programme for improving the status of female victims of sexual violence has been completed, the document has encountered political opposition and has not been adopted either.⁴⁴ Reparations are also mentioned in the law on missing persons, but no implementation has taken place.

In Croatia, a law providing for comprehensive reparations for the victims of war-related crimes of sexual violence was adopted in 2015, but there are challenges in its implementation, leading to a perception of ethnic bias from the perspective of the country's Serb community.⁴⁵ In Serbia, whole categories of potential victims are excluded in the current *Law on the Rights of Civilian Invalids of War*. What remains for them is to pursue legal court cases, which are lengthy and costly.⁴⁶ In Kosovo, reparations openly favour Kosovo Albanian victims only. Kosovo's current legislation for reparations, although welcomed for its focus on sexual violence, sets time limits for eligibility to the period of armed conflict, defined as ending on 20 June 1999, and thus discriminates against victims who faced sexual violence thereafter – predominantly Kosovo-Serb, Roma, and some Albanian women.⁴⁷

Need for psychosocial support

There is a continuous need for psychosocial and health support for victims, but assistance for them and their families is scarce. Throughout the Western Balkan states, the prevalence of trauma is still unknown. In Bosnia, for example, there are incidences in which civilian

⁴³ See reporting by BIRN, <http://www.balkaninsight.com/en/article/bosnian-serbs-voice-against-new-torture-victim-law-12-01-2017> (last visited 6 March 2018).

⁴⁴ For further information see website of the UN Office of the Special Representative of the Secretary General for Sexual Violence in Conflict, Bosnia and Herzegovina, available at <http://www.un.org/sexualviolenceinconflict/countries/bosnia-and-herzegovina/> (last visited on 6 March 2018).

⁴⁵ See reporting by BIRN, <http://www.balkaninsight.com/en/article/croatia-denies-sexual-war-victim-her-status-11-20-2017>, <http://www.balkaninsight.com/en/article/croatian-serb-family-compensated-for-post-storm-killing-05-09-2017> (last visited 6 March 2018).

⁴⁶ See reporting by BIRN, <http://www.balkaninsight.com/en/article/serbia-fails-to-ensure-victims-reparation-rights-report-01-22-2016> (last visited 6 March 2018).

⁴⁷ See Amnesty International Kosovo 2017 report, *supra* note 16, p. 9.



victims, including rape victims, are not included in surveys by health ministries that assess the scale of post-traumatic stress disorder.⁴⁸ Mental healthcare centres are often non-existent. Where they exist, they are far from sensitive to victims. In general, there is a shortage of psychiatrists, in addition to inadequate training for treating war trauma, especially regarding the trauma of sexual violence. Non-governmental organisations (NGOs) have been doing tremendous work in this field, stepping in where the authorities failed to fulfil their obligations/responsibilities. Notably, NGOs remain the main provider of legal aid and of psychosocial assistance to the most vulnerable victims. However, NGOs providing these services appear to be disproportionately affected by funding reductions, and are barely able to provide basic services to people seeking help. This affects women victims of sexual violence in particular.⁴⁹

Overall the assessment shows a lack of strategies to tackle the gender inequalities and discrimination that persist in society. Reforms seem to be gender-blind and risk reproducing 'old' patterns and structures instead of being transformative. An opportunity has clearly been missed.

Property restitution

There has been some progress in the area of property restitutions. In most of Bosnia and Herzegovina, property has been returned or compensated for, although people are still afraid to return to their former homes.⁵⁰ In some areas of Bosnia and Herzegovina, Croatia, and Kosovo, those who return often face difficulties reintegrating into society and remain stigmatised. Most of the people who decide to return are elderly.⁵¹

Problems also persist with property in Croatia, which has in many cases refused to return property to Croatian Serbs.⁵² There is also an issue of property between Serbia and Kosovo, which is expected to be addressed during the Belgrade-Pristina dialogue.

The key responsibility for the lack of progress in the area of reparations lies with governments and authorities in the region who lack the political will for change and listen more to those who benefit from the ongoing impunity. The divisions among victims' associations and groups, which are mainly mono-ethnic throughout the Western Balkan states, creates additional obstacles given the important 'driver' function that victims' groups

⁴⁸ Hadzimesic in *The Oxford Handbook of Gender and Conflict*, *supra* note 19, p. 516.

⁴⁹ *Ibid.*

⁵⁰ See BIRN's report *Bosnians' Homecoming Marred by Post-War Tensions and Poverty*, available at <http://www.balkaninsight.com/en/article/bosnians-homecoming-marred-by-post-war-tensions-and-poverty-02-21-2018> (last visited 25 March 2018) and UNHCR latest report *Internally displaced people and returnees in Bosnia and Herzegovina*, available at <http://reporting.unhcr.org/node/15810> (last visited 25 March 2018).

⁵¹ Milan Mesić and Dragan Bagić (2016) *Minority (Serb) Returnees to Croatia*, in Sabrina P. Ramet and Marko Valenta (eds.), *Ethnic Minorities and Politics in Post-Socialist Southeastern Europe*, Cambridge: Cambridge University Press, pp. 211-231.

⁵² See Center for Regionalism report, *Citizens' Property and Status Issues in Countries Signatory of Dayton Agreement, Resulted from Disintegration of Yugoslavia*, available at <http://www.centarzaregionalizam.org.rs/prilozi/White-Paper.PDF> (last visited 25 March 2018).

normally play in other contexts to put more pressure on authorities to deliver results. One commentator described the current situation regarding victims' organisations in Bosnia as follows: "Victims' and survivors' organisations are among the most deeply politicised subset of the NGO sector, with very few cross-cutting relationships and networks with victims' organisations from other identity groups. All of these organisations remain exclusively mono-identity, and it is difficult for them to build alliances across ethnic identities".⁵³ To change the funding dependencies of these groups on nationalist politicians would be a first step towards freeing them from the perception that they are part of a system of impunity rather than a driver against it.

⁵³ Yakinthou, *Fighting Windmills*, *supra* note 36, p. 81.



Guarantees of Non-Recurrence

Summary: As it stands today, a strategic vision is missing in Western Balkan states on what should be effective guarantees for preventing the recurrence of violations. The bulk of the interventions have focused on institutional reform, targeting the judiciary and the security sector. Some gains have been made in terms of establishing the legal framework, but there are major shortcomings in the area of implementation. The international community, in particular, interpreted its mandate narrowly and approached reform as a technical, operational, and merely forward-looking task without addressing the legacy of the conflict. As such, the lack of effective oversight mechanisms is a major concern. Civil society oversight and participation in reform efforts are weak or lacking, and constantly undermined by powerful systems of impunity. At the cultural level, policies are missing in areas such as memorialisation and archives, leaving too much space for nationalist ideologies to dominate cultural debates and discourse. These ideologies are openly promoted by mainstream politicians today in Western Balkan states, claiming absolute victimhood for their own group and blaming the other for past abuses. This environment is not conducive to effectively combatting impunity. Some civil society groups are holding on against this trend and need to be supported. Finally, and of the utmost concern, is that education continues to be segregated, deeply entrenching ethnic prejudices from very early on in life. With history teaching following nationalist narratives in nearly all Western Balkan states, the educational sector as a guarantor for the non-recurrence of violations is seriously challenged.

In this section, the assessment will briefly look at what measures have been put in place to ensure the non-recurrence of violations. The assessment takes a broad approach, following the UN Special Rapporteur's definition of guarantees of non-recurrence, by looking at interventions at the institutional, cultural and individual levels that could contribute to the non-recurrence of violations.⁵⁴

Institutional reform efforts

Institutional reform efforts, including those targeting the security and judicial sector, differ from country to country, including in terms of international involvement, with Bosnia and Kosovo receiving the largest number of direct interventions in this region.⁵⁵ There is no

⁵⁴ Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, 7 September 2015, A/HRC/30/42, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/202/04/PDF/G1520204.pdf?OpenElement> (last visited 6 March 2018).

⁵⁵ For an overview, see the Belgrade Centre for Security Policy and Geneva Centre for the Democratic Control of Armed Forces (DCAF), *2012 Almanac on Security Sector Oversight in the Western Balkans*

comprehensive analysis of linking institutional reform to questions of dealing with the past; some work has been done on Bosnia and Herzegovina, but there is no recent follow-up analysis.⁵⁶ In terms of broader institutional reform, there is a general concern that the judiciary is weak, suffering from a lack of resources and capacity, as well as political interference. As a result, it is unable to play the oversight role ascribed to it in a society based on the rule of law. In the security sector, some gains have been made in terms of legislative reform, including police reform. Problems persist however in the area of implementation. When it comes to gender-sensitive approaches, assessments indicate an absence of institutional policies, strategies and guidelines that address gender in the armed forces, police, army, judiciary, and penal institutions, such in the case of in Bosnia and Herzegovina.⁵⁷

As a consequence of the disintegration of the former Yugoslavia, in the post-conflict period, institutions needed to be created from scratch throughout the region. Nationalist groups were adamant about keeping control of the security sector, a situation which has continued to this day.⁵⁸ War crimes suspects continue to form part of the security sector in almost all Western Balkan states.⁵⁹ Local trials for war crimes showed that many defendants at the time of their arrest were active members of the security services. Many units that are alleged to have committed war crimes during conflict period were dissolved, but their members remained active in the police, armed forces, or other state institutions. Some vetting has occurred in Bosnia and Herzegovina, albeit with uncertain success. At the very least it has increased the representation of women and minorities in the security sector and reduced the generally inflated police force numbers. However, as one commentator put it in the context of Bosnia: “The EUPM (European Police Mission) interpreted its mandate narrowly and approached police reform as a technical, operational and merely forward-looking task that insufficiently acknowledged the political, administrative and social

(hereinafter 2012 DCAF Almanac), available at <http://www.bezbednost.org/upload/document/almanac.pdf> (last visited 6 March 2018). See also DCAF website, <https://www.dcaf.ch/security-sector-reform-south-east-europe-necessary-remedy-global-concept>; for Serbia see Belgrade Centre for Security Policy (2011) *CONTEXT ANALYSIS OF THE SECURITY SECTOR REFORM IN SERBIA 1989-2009*, available at https://www.files.ethz.ch/isn/133567/context_analysis_of_SSR.pdf (last visited 6 March 2018); on defence reform in Western Balkan states see Milan Jazbec (2005) *Defence Reform in the Western Balkans: The Way Ahead*, DCAF, Policy Paper, available at https://www.dcaf.ch/sites/default/files/publications/documents/pp06_defence-reform.pdf (last visited 6 March 2018).

⁵⁶ Alexander Mayer-Rieckh, (2007) *Vetting to Prevent future Abuses: Reforming the Police, Courts, and Prosecutor's Offices in Bosnia and Herzegovina*, in Alexander Mayer-Rieckh and Pablo de Greiff (eds.), *Justice as Prevention: Vetting Public Employee in Transitional Societies*, Chapter 5, pp. 150-220; Alexander Mayer-Rieckh (2013) *Dealing with the Past in Security Sector Reform*, SSR Paper 10, DCAF, (hereinafter Mayer-Rieckh, *Dealing with the Past in Security Sector Reform*), pp. 36-50, available at https://issat.dcaf.ch/download/34420/497203/SSR_10_EN.pdf (last visited 6 March 2018).

⁵⁷ See Geneva Centre for the Democratic Control of Armed Forces (2011) *Gender and Security Sector Reform in BiH*, p. 12, available at https://www.dcaf.ch/sites/default/files/publications/documents/2011_12_07_Gender%20and%20Security%20Sector%20Reform.pdf (last visited 6 March 2018).

⁵⁸ *Ibid.*

⁵⁹ See reporting by BIRN, <http://www.balkaninsight.com/en/article/balkan-war-crime-suspects-maintain-political-influence-12-02-2016> (last visited 6 March 2018).



dimensions of reforming a police after conflict, including the challenge of addressing the conflict's legacy".⁶⁰

Oversight mechanisms

Oversight mechanisms, both internally and externally, are shockingly weak, with rare, if any, compliance by the executive.⁶¹ Parliamentary oversight is also limited and there is blatant disrespect for independent oversight mechanisms, such as ombudsmen's offices or human rights commissions. That being said, a proactive stance by independent oversight mechanisms in Serbia has opened up some space. Public participation is increasing, through the use of petitions, for example.

Civil society oversight and participation in discussions about the security sector is limited. The lack of transparency by policy and decision-makers and access to information is a major problem. There are some innovative projects and initiatives by civil society focusing on prevention of non-recurrence. Organisations such as the [Post-Conflict Research Centre \(PCRC\)](#) have programmes empowering youth through citizen journalism, art, film and photography. The PCRC focuses on the prevention of genocide, mostly through the education of young people. It will also launch a coalition of 25 organisations from the region focusing on genocide prevention in cooperation with the [UN Office for Genocide Prevention and Responsibility to Protect](#). Although the PCRC's work is highly appreciated by the international community, the initiative lacks funding.

The cultural level: Memorialisation, Education, Archives

At the cultural level, as reported by BIRN and others over the past two decades, an unprecedented number of new monuments have been built all over the former Yugoslavia. However, governmental policies in the area of memorialisation appear to be absent throughout the region. The majority of monuments commemorate fallen fighters, conflict victims, historical heroes or foreign allies. In some cases, the individuals commemorated are considered to be war criminals in other jurisdictions. Very few attempts are made to promote reconciliation or an ethnically-inclusive view of peace. Instead, monuments often promote selective and divisive views of recent history, exacerbating ethnic tensions. This issue is particularly acute in Bosnia and Kosovo, where central authorities do not seem to have any official record of how many monuments have been erected in the post-war period, or how much public money has been put into these projects.

The construction of monuments has caused controversy in post-conflict societies across Europe. The issue is critical in the Western Balkans, however, since memories of the recent wars remain vivid. According to one commentator, the main problem is not the monuments themselves, but the socio-political context in which monuments are established that creates

⁶⁰ Mayer-Rieckh, *Dealing with the Past in Security Sector Reform*, *supra* note 54, p. 49.

⁶¹ See DCAF 2012 Almanac, *supra* note 54.

and reinforces division between ethnic or political groups. In such a context, so it is argued, monuments have a higher potential to becoming factors of division, and, as a result, often used to blame ‘the other side’.⁶²

Throughout the region, various civil society-led documentation and memorialisation efforts exist, including documentary films, oral histories, short-term visual art memorials, and archives. Of note are initiatives such as the Sarajevo Roses,⁶³ the Red Chair Memorial,⁶⁴ the Bosnian Book of the Dead,⁶⁵ and the repeated efforts and micro-memorials of families of children murdered during house raids in Prijedor in 1992 to create a permanent site of memory.⁶⁶ A number of memorial ceremonies happen annually around the ICMP’s return of remains of the disappeared to their families. The most organised of these ceremonies are the 11 July Srebrenica burials, during which people who were killed in the genocide and have been identified over the previous year are buried at the Srebrenica cemetery in Potočari. NGOs, in particular Women in Black and the Youth Initiative for Human Rights, stage their own memorials and commemorations, challenging the official state narratives. As a result, they are often targeted by nationalist groups and have even faced lawsuits for their memorialisation efforts.

Peace activists, together with war veterans, have also found imaginative ways to create inclusive forms of remembrance. For example, veterans from Bosnia and Serbia decided to speak out about their experiences of the war and to enter a dialogue with former enemies. They also began to launch practical initiatives for inclusive cultures of remembrance, visiting atrocity sites and paying their respects to the victims from different sides, empowered by the Centre for Nonviolent Action (Sarajevo/Belgrade).⁶⁷ Further peacebuilding activities involving ex-combatants have been developed by the Centre for Trauma in Novi Sad (Serbia), aimed at dialogue with young people about the past and peace education in

⁶² See Interview by BIRN with Nicolas Moll, available at <http://www.balkaninsight.com/en/article/a-different-kind-of-remembrance> (last visited 25 March 2018).

⁶³ To learn about this project, see “Sarajevo Roses” Urban Association, available at <http://udruzenjeurban.ba/english/sarajevo-roses/> (last visited 25 March 2018).

⁶⁴ For more, see Elvira Jukic, *Sarajevo Remembers Siege with Sea of Red*, Balkan Insight, 6 April 2012, available at www.balkaninsight.com/en/article/sarajevo-marks-siege-after-20-years (last visited 6 March 2018).

⁶⁵ See Dzenana Halimovic, *Bosnian Researcher Counts War Dead, and Faces Threats for His Methods*, Radio Free Europe, 21 November 2008, www.rferl.org/content/Bosnian_Researcher_Counts_The_Dead_And_Faces_Threats_For_His_Objectivity/1350799.html (last visited 6 March 2018).

⁶⁶ See Amer Jahic, *Prijedor Authorities Silent on Memorial for Child Victims*, Justice Report, 29 May 2015, available at www.justice-report.com/en/articles/prijedor-authorities-silent-on-memorial-for-child-victims (last visited 6 March 2018); Refik Hodzic, *Flowers in the Square: A struggle for justice in a Bosnian Community whose significance resonates far beyond the Balkans*, International Center for Transitional Justice, available at <https://www.ictj.org/sites/default/files/subsites/flowers-square-prijedor/> (last visited 6 March 2018); and Haris Subasic, *The Culture of Denial in Prijedor*, Transconflict, 29 January 2013, available at www.transconflict.com/2013/01/the-culture-of-denial-in-prijedor-291/ (last visited 6 March 2018).

⁶⁷ Martina Fischer (2016) *Transitional Justice – Lessons from the Western Balkans*, Berghof Policy Brief 05, p. 10, available at https://www.berghof-foundation.org/fileadmin/redaktion/Publications/Policy_Briefs/PolicyBrief05.pdf (last visited 6 March 2018).



schools.⁶⁸ Similarly, the group *Hajde da...* in Belgrade has involved former soldiers in cultural initiatives and brought them onto the stage in a theatre production to share their combat-related experiences with a broader audience and open up space for a dialogue about the past. Activities of this nature should receive more attention.⁶⁹

At the level of education, there are two areas of concern that seriously undermine efforts to prevent the recurrence of violations. First, the continuing segregation in schools remains an issue.⁷⁰ Generations of children in Bosnia and Herzegovina, Croatia, Kosovo, and the former Yugoslav Republic of Macedonia have been educated in ethnically-segregated schools under the pretext of the protection of the linguistic and cultural rights of a certain ethnic group. Ethnic prejudices are thus deeply engrained at an early stage and subsequently difficult to counter. Advocates of this approach are ethno-nationalist parties and politicians who benefit from such segregation since it solidifies ethnic divisions, breeds fear and mistrust, and leads to homogenous voting blocs.⁷¹ The most egregious example of this practice is the ‘two schools under one roof’ system in Bosnia and Herzegovina, which remains in practice despite a domestic court decision that found the system to be discriminatory. Human rights bodies have also issued numerous recommendations to the authorities on this issue.⁷² All remain unaddressed. On a positive note, some student-led civic action has caused local authorities to abandon their plan to create yet another ethnically-segregated school.⁷³

Another area of concern is the teaching of history, which is used as a divisive tool in Western Balkan states.⁷⁴ Within curricula, nationalist narratives of victimhood, dating as far back as the two World Wars, and the legitimacy of liberation wars distort historical truth and obscure the responsibility for violations, which could be dangerous in terms of preparing the ground for future conflict. In most of the Western Balkan states, history books support dominant nationalist narratives. There are efforts to revise history textbooks, such as in Croatia, but even if new textbooks do exist, whether or not they are used often depends on individual teachers.⁷⁵

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ CHR, Reconciliation Stalled in the Western Balkan States’, *supra* note 3.

⁷¹ Tea Hadziristic (2017) *Two schools under one roof: a lesson in ethnic unmixing from Bosnia’s segregated school system, open democracy*, available at <https://www.opendemocracy.net/wfd/can-europe-make-it/tea-hadziristic/two-schools-under-one-roof-lesson-in-ethnic-unmixing-from-bosnia> (last visited 6 March 2018).

⁷² Ari Ruffer, *Two Schools Under One Roof: School Segregation in Bosnia and Herzegovina*, Colombia Journal of Transitional Justice Bulletin 8, available at <http://jtl.columbia.edu/two-schools-under-one-roof-school-segregation-in-bosnia-and-herzegovina/> (last visited 6 March 2018).

⁷³ See reporting by BIRN, <http://www.balkaninsight.com/en/article/bosnian-pupils-rally-against-ethnic-segregation-in-schools-06-20-2017> <http://www.balkaninsight.com/en/article/students-challenge-ethnically-divided-education-in-bosnia-06-12-2017> (last visited 6 March 2018).

⁷⁴ Dubravka Stojanović (2017) *History – the continuation of war by other means*, from the conference Memory laws. Criminalizing historical narratives, University of Columbia, October 2017, available at <https://pescanik.net/history-the-continuation-of-war-by-other-means/> (last visited 6 March 2018).

⁷⁵ European Stability Initiative (2015) *Teaching War, How Croatian schoolbooks changed and why it matters*, Textbook series – part one, available at <http://www.esiweb.org/pdf/ESI%20->

The assessment found that a lack of attention is being paid to the question of archives from the wars in the 1990s. Countries in the region have a non-transparent state policy on the issue of their archives. As a result, many state archives, including security archives, are not accessible to the public.⁷⁶ Equally, the international community, including the UN, was generally inconsistent in the handling of its archives. Limitations of this kind, as has been the case in Bosnia and Kosovo, impede access to important documents that could be used by transitional justice mechanisms. As set out above (see section on criminal justice), with the closing of the ICTY, uncertainty as to what will happen to its archives remains. The assessment further found that civil society organisations, including NGOs and victims' groups, sometimes maintain their own archives, often without clear policies or standards on issues such as access and preservation. Further research is urgently needed in this underexplored area.

Finally, broader public debates on the responsibility for the wars of the 1990s are largely absent, suppressed by the ruling elites and influential nationalist groups and parties. Also in this respect, alleged war criminals maintain political influence in society. Media outlets lack independence and are used as tools to manipulate the discourse.⁷⁷ Coverage of transitional justice topics is poor, and when it does happen, it is often politicised, sensationalised and biased. Media reports often reflect ethnic divisions in society, while objective and holistic reporting is rare. Maintaining such a system lays the ground for future conflict. Civil society groups such as Dokumenta have shifted their focus towards balancing the public debate and regaining space for 'non-biased' discourse about the past. With its focus on transitional justice, the BIRN network is equally trying to contribute to this end. Nevertheless, these initiatives need support as part of a broader policy to combat impunity in the Western Balkan states as a guarantee of non-recurrence.

[%20Teaching%20War.%20Why%20Croatian%20textbooks%20matter%20-%2016%20September%202015.pdf](#) (last visited 6 March 2018).

⁷⁶ See Humanitarian Law Centre report: *Access to documents related to crimes against international law in the possession of Serbian institutions: State Secret Prevails over Right to the Truth*, available at http://www.hlc-rdc.org/wp-content/uploads/2016/04/Pristup_dokumentima_o_zlocinima_eng.pdf (last visited 25 March 2018).

⁷⁷ See International Centre for Transitional Justice, *Transitional Justice and Role of Media in the Balkans*, available at http://www.hlc-rdc.org/images/stories/Outreach/Regionalne_konsultacije/pristina/Tranziciona_pravda_i_uloga_medija.pdf (last visited 25 March 2018); see also Humanitarian Law Centre report, *Media Discourses on War Crime Trials in Serbia, 2003-2013*, available at http://www.hlc-rdc.org/wp-content/uploads/2014/11/medijski-diskursi_SR.pdf (last visited 25 March 2018).



3. Assessing transitional justice interventions in Western Balkan States: Lessons to be learned

The overview of where transitional justice interventions stand in Western Balkan states provides clear evidence that TJ continues to face serious challenges in the region. The picture is grim, and as the overview demonstrates, systems of impunity have gained the upper hand in discourses about dealing with the past.

The question is *why* this could have happened. Some might answer this question by saying that this is normal and that things take time. While this is partly true, it should not be used as an excuse for inaction. History shows us that unaddressed grievances often to haunt the present and blight the future. As is argued above, the conflict of the 1990s in the Western Balkans were in part a direct consequence of the failure to deal with grievances from World War II. More than 20 years after the conflict came to an end, it is legitimate to take stock and try to answer the question: *why does impunity for the crimes of the 1990s continue to be rampant in Western Balkan states?* The following pages seek to impart some lessons that might explain or at least provide some hints as to why impunity continues to be widespread despite the clear policy commitments that were made at the end of the conflict in the 1990s to fight against it. It is hoped that these lessons will contribute to a shift in how interventions on transitional justice are conducted in Western Balkan states and beyond.

Lesson 1: Transitional justice interventions in Western Balkan states have failed to tackle impunity for past crimes.

The ‘traditional drivers’ of TJ, such as civil society or justice institutions, do not appear to have the strength to address widespread and ingrained systems of impunity. TJ initiatives have often missed the point or, as is the case for criminal justice and reparations, have been manipulated and subsequently perceived as divisive rather than as a contribution to reconciliation. Also in the area of changing ‘old’ patterns of gender inequality and discrimination, initiatives have blatantly failed to contribute to change. Nevertheless, it is not the fault of transitional justice *per se* that there has been a lack of progress, it is the political process that has failed. In the case of Bosnia and Herzegovina, for example, the Dayton Peace Accord, in spite of its uncontested contribution to peace, has frozen the division between the different groups and provides neither the institutional nor cultural incentives to enable transitional justice mechanism to bring about change. A political approach that took into account contextual factors and manifested transitional justice initiatives accordingly would have been more targeted towards finding solutions in fighting impunity. Instead, piecemeal and project-driven approaches have dominated efforts in the area of transitional justice.

While the debate about war crimes, which was initially prompted by the ICTY, has been internalised in the Western Balkans, there has been no consensus on the cause(s), nature and consequences of the violence, or redress for past wrongs. This is the case nationally as well as regionally. Contextual factors have to be taken into account in any further design of TJ interventions in WB states.

Lesson 2: Transitional justice interventions have been too narrow. They have focused almost exclusively on criminal justice and to some extent on addressing the fate of missing persons.

This narrow focus has led to various consequences.

First, the predominant focus on criminal justice has made it difficult for other transitional justice ideas and innovations to flourish. This was particularly apparent in the early days of the ICTY, but remains the case to date; justice continues to be equated with criminal justice. Broader debates as to why criminal justice should be the main focus of interventions have never been provided. The only legitimacy for the ‘primacy’ of criminal justice is found through ad hoc perception studies, which have limitations in their methodologies. The ICMP demonstrates that a more holistic and comprehensive approach is possible. As such, it has worked closely with the ICTY (and subsequently with the local courts in the Western Balkans) to ensure that remains are processed in a way that would enable criminal prosecutions and to show the full scope of the crimes committed. In its own evolution, the ICMP has drawn on its global networks, including the International Committee of the Red Cross and the Argentinian Forensic Anthropology Team, especially in its shift from humanitarian to law-based processes for the prosecutions. It has supported networks that provide medical and psychosocial support to families of the missing and war crimes witnesses, as well as working closely with media (and media education).

Secondly, the technical nature of criminal justice has also contributed to a professionalisation and a highly technocratic understanding of transitional justice, whereby only some people understand how it functions. As a result, it has become an exclusive field, often detached from the needs of those who have been affected by the crimes.

Third, the focus on criminal justice has given rise to unrealistic expectations that could never be fulfilled given the large number of cases or the contextual factors, such as weak institutions. The limitations of criminal justice in addressing the past have never been the subject of thorough debate. Despite the development of prosecutorial strategies in some Western Balkan states, they have not been implemented, nor have there been effective and inclusive consultations or outreach around them. Designing prosecutorial strategies that look at the context and at the root causes of the conflict, such as the continuation of informal nationalist networks, could have assisted in dismantling these structures that continue to obstruct efforts to fight impunity.



Lesson 3: Broader participatory and consultative processes on what form transitional justice should take in Western Balkan states have been, with some exceptions, lacking.

No country in the region has undertaken an inclusive consultation process to identify transitional justice needs. Transitional justice mechanisms and policies were often imposed from outside, while the only genuine effort in this area was led by civil society organisations. There were regional consultations in the framework of RECOM, but these were mainly civil society-driven and focused on the establishment of one mechanism. There were also discussions in Bosnia and Kosovo on creating comprehensive national policies/strategies on TJ, but these have not led to any results.⁷⁸ In Kosovo, the development of a strategy on dealing with the past has even been divisive and has led to polarisation among different actors, including civil society.⁷⁹ Conducting nationwide consultations would have been important to formulate a clear vision on transitional justice driven by the need to fight impunity, and could also have acted as a justice measure in itself, signalling a change to victims in particular and acknowledging their suffering across ethnic divides.

This assessment also reveals that Western Balkan states have done very poorly when it comes to victim participation in transitional justice processes. This is a major shortcoming. Systematically including victims in the discussion on the way forward for transitional justice would keep the focus on their needs and help create space for the fight against impunity. It would also assist in counterbalancing the negative perceptions that victims have about transitional justice. Donors, including the EU, do not seem to have a strategic vision on victim participation in Western Balkan states in spite of various policy frameworks stipulating the need for victim centrality in TJ work, including the EU's new TJ policy framework (2015).⁸⁰ In recent years, many donors have also withdrawn their support from projects that focus on transitional justice, shifting instead towards projects with a focus on the rule of law and security.

⁷⁸ TRIAL General Allegation, *supra* note 7, p. 6.

⁷⁹ Nora Ahmetaj and Thomas Unger (2017) *Civil society review of progress toward a National Strategy on Transitional Justice*, available at https://www.impunitywatch.org/docs/Civil_society_review_report_final_ENG_8.5.pdf (last visited 6 March 2018).

⁸⁰ The policy is available at http://eeas.europa.eu/archives/docs/top_stories/pdf/the_eus_policy_framework_on_support_to_transitional_justice.pdf (last visited on 6 March 2018).

Lesson 4: Reform in Western Balkan states has been understood as strictly institutional, ignoring informal structures that promote nationalist ideologies and undermine any long-term success in changing systems of impunity.

Reform efforts have so far taken a very narrow technical approach and concentrated solely on ‘training and equipping’ state institutions, such as the judiciary and the security sector. As a result, these reform efforts have failed to challenge powerful informal networks outside the traditional state institutions and structures. The dominant logic of reform today – also within the EU – is that change, including reconciliation, will occur alongside the transformation of the Western Balkan countries as they develop economically, which includes their move towards EU membership. The flaw in this logic was revealed, however, by the persistent reluctance of the states and societies to confront their own nation’s role in the conflict.

This reluctance is nurtured by informal networks and groups that support nationalist ideologies, as well as the ideology that the ‘just war for liberation’ legitimises any kind of violation. These networks, which often have indicted, convicted or suspected war criminals in their ranks, have been, as shown above, quite successful in undermining any process aimed at combating impunity. Without tackling this issue and dismantling these structures, ensuring success for reforms will be challenging.

We must rethink what reform means in these circumstances and how to make it more effective in the cause of fighting impunity. For too long, the ICTY has been the only tool that provided an incentive for change, but a court has obvious limitations in dealing only with individual criminal responsibility and not with changing ideologies. The EU accession process provides an opportunity to shift how we understand effective reform that tackles systems of impunity. So far, according to some commentators, when it comes to reform, the EU prioritises “*member state-building*, which was applied to Central and East European membership candidates, as opposed to *post-conflict state-building*, which would entail a much broader reconstruction agenda for states and societies emerging from war”.⁸¹ This narrow approach has also impacted on civil society. Civil society development is guided only by the immediate priorities of European integration. So at the end of the EU accession process for the remaining Western Balkan states, we might face the dilemma of states fulfilling all the chapters, signalling a successful reform process, but at the same time the persistence of networks of impunity and nationalist ideologies that call for exclusion and in some cases even violence against the other group. This would put the fundamental goal of the EU as a peace initiative into jeopardy. As such, the new EU policy framework for transitional justice should guide discussions around justice in the accession processes. More research on this topic is needed in the future.

⁸¹ Kostovicova, Civil society and reconciliation in the Western Balkans: great expectations?, *supra* note 36, p. 103.



Lesson 5: Political interventions by the international community have only half-heartedly supported transitional justice.

To put it bluntly, transitional justice is not a priority area in ongoing political discussions and bilateral relations between Western Balkan states and the international community. This is also reflected in the figures: funding of transitional justice is on the decline.⁸² The focus of interventions by outside actors in the region, such as the EU, has been on supporting economic cooperation and stability. The decision not to link transitional justice to other policy interventions has limited the space and leverage for transitional justice and its main drivers. The dissolution of Yugoslavia created nation states, and within them, different political processes and frameworks decide on the space given to transitional justice. Looking at the region from a TJ perspective, one will find different conditions in the various countries. None seem, however, conducive for TJ. Croatia has joined the EU and different standards are applied to EU member states when it comes to TJ. The political framework in Bosnia and Herzegovina is determined by the Dayton Peace Accord, which is a power-sharing agreement, leaving not much space for TJ initiatives. TJ in Kosovo and Serbia is seen from the perspective of the political dialogue between Belgrade and Pristina, although no transitional justice issue has been tackled so far in the Belgrade-Pristina dialogue. There were efforts to include missing persons as one of the topics, but the two sides couldn't agree on modalities.

An additional factor is that transitional justice support is predominantly expressed through the funding of projects. From the international community's side, TJ initiatives are carried out by development agencies and donors, who often claim to act 'apolitically'. Placing TJ on the political agenda would provide more incentives for creating space for reform. The implementation of the new EU strategy for Western Balkan states could be a good opportunity to enforce this shift, as well as the last rounds of the Berlin Process.⁸³ The RECOM coalition is currently active in the framework of the Berlin Process and needs to be supported by the international community, in particular EU member states. EU support for transitional justice needs to be strengthened in order to be coherent with the clear political commitment expressed for TJ in the EU's 2015 policy framework. This policy framework also clearly promotes linking transitional justice to other policy interventions, such as development and security. Practice shows, however, that there is often lack of cohesion and coherence between policy commitments and action on the ground. EU interventions in Western Balkan states have been characterised as hands-off because, as of 2006, the EU

⁸² Overall, and in comparison to other interventions, funding for transitional justice measures has been low in Western Balkan states, with a bias towards funding institutions in the area of documentation and criminal justice. Some funding has also been provided to memorialisation. Information on the exact figures is scarce and it is difficult to get a good overview given the many actors and the high level of non-transparency. For first overview on TJ funding see Yakinthou, *Fighting Windmills*, *supra* note 36.

⁸³ See Stappers and Unger, *The EU's Balkan Strategy Misses Chance to Tackle Past Injustice*, *supra* note 5.

appears to be unwilling to directly confront sensitive political topics in the area of dealing with the past and has decided that change should come through economic development.⁸⁴

Lesson 6: Civil society in the area of dealing with the past lacks the strength to play a meaningful role in preventing the recurrence of violations.⁸⁵

Civil society has been a key driver of transitional justice in Western Balkan states. It has ensured that the question of accountability for war crimes and mass human rights violations was put – and has remained, although declining – on the political agenda throughout the region. It has stepped in for weak state capacity in the pursuit of post-conflict justice. Civil society has also been an alternative to often technocratic transitional justice interventions from outside actors. One commentator argues that “it emerged as a local response to the war crimes legacy as opposed to internationally-driven ones and as an answer to weaknesses of the top-down trial-oriented mechanisms of transitional justice, and as a transnational instrument overcoming the limitations of nationally-defined approaches”.⁸⁶

As the UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence has noted on various occasions, a strong civil society, which is able to make claims for justice, is the best guarantor for preventing the recurrence of violations.⁸⁷ Civil society nevertheless faces serious challenges to its ability to play this role in a meaningful way and to continuously open up space in the fight against impunity.

First, there is the issue of civil societies’ weak capacity. The increase in registered civil society organisations working on advancing transitional justice paints a misleading picture of their capacity to effect change. Not only are many organisations inactive, those that are active often lack capacity in relation to their fundraising ability and expertise on complex policy issues. Moreover, even the most active and capable civil society organisations have been constrained to various degrees by the legal framework set out by Western Balkan states and the ever-shrinking space for civil society.

Second, civil society’s lack of financial autonomy has shaped its structure and perception by the broader society. Victims’ associations that depend financially solely on the state have on various occasions become agents of the state’s agendas rather than pursuing their own. As a result, some victims’ associations have, in fact, ended up overlooking victims’ interests. Other organisations that turned to external donors for funding were criticised for pursuing ‘external’ or ‘foreign’ agendas. Such public perceptions affected their standing as a legitimate actor for change in the society. In addition, funding schemes have predominantly

⁸⁴ Yakinthou, *Fighting Windmills*, *supra* note 36, p. 69.

⁸⁵ For a thorough assessment of civil society in WB states see Kostovicova, *Civil society and reconciliation in the Western Balkans: great expectations?*, *supra* note 36, pp. 105-106.

⁸⁶ *Ibid.*

⁸⁷ See OHCHR website, <http://www.ohchr.org/EN/Issues/TruthJusticeReparation/Pages/Index.aspx> (last visited 6 March 2018).



benefited larger, capital based organisations. Smaller groups or organisations outside the capitals or main cities often do not have the resources or the knowledge to compete in funding proposals. The dependency on increasingly limited donor funds has also contributed to a sharp increase in competition among civil society groups. This has led, as some describe it, to a hostile climate within civil society.

Third, civil society in the Western Balkans is, as has been highlighted above, fragmented.⁸⁸ Initiatives that go beyond national borders and the mono-ethnic trend within civil society are rare. Youth exchanges, informal memorial initiatives challenging dominant narratives, meetings and gatherings among victims' associations or war veterans are often poorly funded and depend on individual efforts. The national states have remained the primary framework for civil society activism. Regional civil society initiatives such as RECOM remain the exception. The necessity for a regional approach to the transnational character of the conflict in the 1990s is obvious given that perpetrators and victims often belong to different states. Positive initiatives that can be listed are youth initiative networks that seek to go beyond the ethnic divides. Another example is BIRN, which operates throughout the region and has employees from various ethnic backgrounds, creating a climate of diversity and tolerance within the organisation.

Finally, a range of civil society organisations with nationalist agendas and far-right movements, as well as the Catholic Church in Croatia, have emerged as promoters of an exclusive ethnic nationalism, combined in some part with an anti-EU agenda.⁸⁹ They deny that war crimes were committed by their nation and promote a narrative of sole victimhood. More research is needed on this, but this worrying observation is likely to represent an obstacle to the more liberally-minded civil society groups that are active and need full support in the fights against impunity.

⁸⁸ Kostovicova, *Civil society and reconciliation in the Western Balkans: great expectations?*, *supra* note 36, pp. 105- 106

⁸⁹ *Ibid.*

4. Conclusions and Recommendations

In conclusion, what this assessment has shown is that transitional justice in the Western Balkans is in a highly troubled state. Measures taken in the area of criminal justice, truth, reparations and institutional reform have by and large failed to tackle impunity for past abuses. Nor are there guarantees in place to prevent the recurrence of serious human rights violations. Twenty years after the end of the conflict, impunity 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. These structures have so far successfully managed to lead the public discourse on the past and avoid accountability.

The picture we are left with is not rosy. Prosecutions are on the decline, truth-seeking is challenged by a one-sided public discourse of denial and revisionism, and reparations have been mainly selective and politicised. At the institutional level, the judiciary and other oversight bodies are too weak to fulfil their function in guaranteeing the non-recurrence of violations. Civil society, as well as the media, lacks strength or is too compromised to make a difference in society. Education is segregated and history manipulated to tell nationalist narratives that go against any serious attempts to deal with responsibility for the past. The Western Balkans continues to be a battleground of conflicting narratives, in which each side claims victimhood and blames the other for past abuses. These are all indicators that are concerning and can, if not addressed, become root causes for future conflict. If this trend continues, we are likely to find ourselves in a dangerous situation.

The question is: how did we get there? How could impunity be on the rise despite the promise of justice that followed the end of the wars in the 1990s, with the ICTY at its main beacon of hope? A key responsibility is to be found in the failure of the international community to translate clear policy commitments in the fight against impunity into viable change on the ground. To put it in other words, interventions in the area of transitional justice lacked a clear strategy or long-term vision. For too long, the focus was on one mechanism only - criminal justice. Yet, prosecutions alone were not able and will not be able to dismantle structures of impunity, nor was there a political will to give them a clear priority in this regard.

Equally, as this report shows, institutional reform has been applied too narrowly without changing the culture within institutions and instead supporting structures that support impunity. Civil society is lacking the strength to counterbalance these structures and its space, along with that of the independent media, is shrinking. Donor support over the years has failed to effectively strengthen civil society. Reparations have been side-lined and could not play their important role in recognising harm and building trust among the various groups contributing to reconciliation. Finally, truth-seeking has been outsourced to civil society and no official recognition of responsibility has taken place at the state or regional level. Officially-sanctioned truth-seeking is an important factor in addressing denial and revisionism - key components that keep structures of impunity alive.



As a cross cutting issue, the transition from the conflict in the 1990s to relative peace today failed to systematically tackle the gender inequalities and discrimination that persist in societies today in the Western Balkans. Reforms have been to a great extent gender-blind and reproduced 'old' patterns and structures of violent and patriarchal masculinities instead of being transformative. An opportunity has clearly been missed here. Impunity Watch will dedicate future reporting to this topic.

So the tools were there but they have been wrongly used or, in the case of reparations, not used at all. The full potential of transitional justice has not been utilised and we can see the consequences of this today.

These shortcomings need to be urgently addressed in order to prevent history from repeating itself. The international community, and especially the EU, cannot shy away from this responsibility. There is too much at stake. How then should it be addressed?

There is an urgent need to change the logic of intervention. Part of this change has to do with departing from the current logic that economic development alone will bring about change, including in the area of justice and reconciliation. The experiences of the Western Balkans show that those who benefit from economic development are to a great extent those who are drivers of these structures of impunity, leaving the countless victims of the wars of the 1990s with empty hands, both economically but also in terms of justice. In order to change this dynamic and to invest in a logic that sees justice as a contribution to preventing future conflict, it has to be linked to other policy interventions, and this has to be done in a participatory manner, including victims and their families.

Importantly, there is also a need to adopt politically-informed approaches to TJ that follow a clear strategy in fighting structures of impunity, based on the needs of victims. The potential of transitional justice mechanisms as a transformative tool need to be better used to tackle these structures of impunity. This will include the development and implementation of policies that are gender-sensitive. Civil society needs to be a key partner in identifying the way forward. This is nothing new. The EU policy framework on TJ (2015) calls for exactly the same thing. It urges victim participation and context-specific approaches, as well as linking justice to development and security. But this commitment has so far not seen action on the ground.

What follows now is a set of recommendations that seek to bring these conclusions a step further. This report is not asking for perfect solutions; there is also no such thing as perfect justice. Things also take time. But the current backsliding in the Western Balkans is alarming. The recommendations are written in the spirit of providing incentives for change.

To the international community:

- **The European Union and its member states need to step up efforts and be more coherent in their foreign policy on transitional justice.** The following actions are recommended in this respect:



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- Existing **structures of impunity need to be consistently challenged** by the EU and its member states, both publicly but also informally, in bilateral meetings. This may include the following actions:
 - EU member states with political leverage, such as Germany and France, should link transitional justice with their other policy interventions. Bilateral dialogues with governments in the region need to integrate follow-ups on progress in the area of fighting impunity and transitional justice.
 - Transitional justice has to be on the agenda of political dialogues, such as the Belgrade-Pristina dialogue, as well as discussions around EU enlargement and the Western Balkans.
 - Anniversaries such as the annual remembrance of the Srebrenica massacres must be used to take stock and critically assess progress on transitional justice and the fight against impunity in Western Balkan states.
 - The United Nations Human Rights Council's Universal Periodic Review (UPR) and other multilateral processes should be used more strategically to challenge structures of impunity.
 - Victims need to be consulted at all times through participatory processes in the context of political dialogues and bilateral meetings.
 - The **newly-adopted policy by the EU on TJ** should constitute a guiding reference point to ensure for coherence on transitional justice interventions by the EU:
 - The European External Action Service (EEAS) should coordinate an effective outreach strategy on the content of the EU's TJ policy, informing diplomatic representations on the ground, as well as other stakeholders, including civil society both in and outside the respective capitals, about key priorities of the policy, including on victim participation.
 - The policy should be translated into local languages and widely distributed.
 - Training on the policy should be provided to the EEAS, as well as other actors, including civil society.
 - The EU, and in particular the European Commission, should use the policy as an indicator of success in the current discussion around enlargement.
 - EU member states should also use the policy in their bilateral contacts with government representations.

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- The EU, in a joint effort by the EEAS and the EC, should organise a **high-level stock-taking conference on transitional justice in Western Balkan states in 2020**. The conference should also look on how the new policy on TJ has changed the Union's engagement on the ground in Western Balkan states.
 - **Investment in the area of transitional justice by the EU, but also by the international community at large, should focus on strengthening civil society.** This may include the following action:
 - The European Commission should take stock of its current logic of supporting civil society in the area of transitional justice, taking into account lessons highlighted in this report. In particular, supporting the role of civil society as a guarantor for non-recurrence and prevention should be a priority.
 - Any future support should be developed through participatory processes and regular stock-taking meetings with civil society in country and also at capital/headquarters level.
 - Regional civil society networks such as RECOM, youth networks, regional investigative journalism networks and regional work on missing persons should be strengthened both politically and financially. In particular, the opportunity to establish RECOM now should not be missed.
 - **Donors to transitional justice initiatives, including the EU and its member states, as well as the US and Switzerland, need to enhance coordination and develop long-term strategies that support a politically-informed approach to transitional justice that tackles structures of impunity, including from a gender perspective.** Such coordination may include:
 - The focus on project funding should be replaced by a purpose-oriented funding scheme that promotes the fight against impunity. Specifically, prosecution strategies should be supported that seek to dismantle structures of impunity.
 - There is an urgent need to support the development of meaningful gender approaches and policies in the Western Balkans that aim to understand better the effect that mass crimes have on gender, and propose a way forward.
 - Supporting reparations for civilian victims needs to be a key priority. Reparations' potential for reconciliation has also not been adequately explored and supported. In particular, the provision of psychosocial support should to be guaranteed.
 - Funding should aim to promote civil society networks that go beyond ethnic boundaries and have a broader reach than just the capitals. An area in which cross-regional approaches and initiatives are needed is on archives.
 - Civil society capacity should be strengthened in the area of policy development and lobbying skills, including through ongoing training and the

promotion of permanent networks that share information on lobbying and good practices.

- Independent oversight mechanisms in the region, such as Commission of Human Rights, Ombudsmen's offices and parliamentary oversight bodies need to be strengthened, both in terms of capacity and financially, to boost their political leverage for change. The focus of support should to be increase public participation in oversight mechanisms, through training and also through facilitating the creation of networks that use oversight mechanisms more strategically as a tool to challenge structures of impunity.
- Donor support needs to be followed up more strategically by political and diplomatic engagement in order to provide incentives for change.
- **International as well as regional organisations must step up their monitoring role on transitional justice in Western Balkan states. The following action could be envisaged:**
 - International organisations need to be more politically courageous in following up on their recommendations and publicly challenging systems of impunity.
 - Better coordination need to be ensured and duplication should be avoided as much as possible. Regular biannual coordination sessions should be organised between the CoE, the OSCE, the UN, and the EU to compare notes but also to develop a common voice on fighting impunity.
 - A cross-organisational policy framework could be developed that is applied by the various organisations and takes regional peculiarities into account.
 - Member states in international organisations need to take up recommendations on transitional justice more regularly in their bilateral dialogues with Western Balkan states and in their statements in multilateral fora, such as in the context of the UPR.
 - The UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence should conduct a regional visit in order to take stock and to ensure better coordination.

To governments in the Western Balkans:

- **Politicians need to publicly distance themselves from structures of impunity and actively promote policies of inclusion.** Political parties should not admit to their ranks indicted or convicted war criminals who play down past crimes.
- **Providing reparations to civilian victims needs to be ensured as a matter of priority.** Legislation should be introduced that is gender-sensitive and does not discriminate and/or arbitrarily select one group over another. Victims across different ethnic groups need to be able to participate in the design of reparation



programmes. Legal aid programmes and assistance needs to be provided for victims to access reparation programmes.

- **Governments in the region need to enhance their regional cooperation in the area of dealing with the past and fighting impunity.** Support must be garnered for the RECOM initiative, as well as for judicial cooperation on war crimes cases and disappearance cases. Governments in the region need to develop policies in the area of access to archives containing records from the conflict of the 1990s that are in accordance with international standards. As an EU member state, Croatia has a particular responsibility to lead regional discussions around addressing the past.
- **Governments need to strengthen independent monitoring and oversight mechanisms in order to put in place guarantees to ensure non-recurrence.** This includes the following actions:
 - **Governments need to provide adequate space for civil society and independent media.** Intimidation and harassment must be vigorously followed up and the perpetrators held accountable.
 - **Independent oversight mechanisms should be strengthened and their recommendations should be complied with.** Governments need to put in place an enabling environment for the public to participate in oversight mechanisms.
 - **The independence of the judiciary needs to be further strengthened and war crimes cases need to be pursued.** Prosecutorial strategies need to be developed to provide purpose-oriented prosecutions that aim to dismantle structures of impunity. Where these strategies exist, they should be implemented without further delay.
- **Governments must implement recommendations by monitoring mechanisms in the area of transitional justice, such as the CoE or the UN.** Governments need to ensure that the different line-ministries are involved in this process and that coordination amongst them is ensured. Civil society needs to be consulted and involved.
- Governments should invite the **UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence** to conduct country visits in the region.

To civil society and victims' organisations:

- **Civil society organisations working on transitional justice need** to strengthen their role as a voice for the victims. The focus should be on developing strategies to ensure the meaningful participation of victims in transitional justice processes.
- **Amid its efforts to garner support from politicians and the international community, the RECOM initiative should promote inclusivity and participation.** It should continue to invest in local grassroots ownership and support.



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- Civil society organisations need to free themselves from donor dependencies and **invest in creativity and innovation** in order to regain trust among the population as a legitimate driving force for the fight against impunity. One suggestion in this respect could be that **civil society groups working in the area of transitional justice connect to social movements within and outside the region**. In this respect, civil society needs to enhance its capacity in the area of social justice, corruption and questions around the distribution of resources and wealth. Strategic litigation could focus on economic and social rights issues in addition to the traditional work of civil and political rights.
 - **Civil society needs to invest in policy development and claim-making capacities to tackle structures of impunity.** This may include the following actions:
 - Specifically linking the fight against impunity with EU accession processes should be a focus, and networks should be created to further cooperation in this area.
 - The exchange of best practices within civil society should be encouraged, while donors should be approached jointly for support. An area in which exchange could take place is on the questions of archives and documentation.
 - Civil society needs to overcome the urban/rural disconnect. Joint initiatives, which are participatory and inclusive in nature, should be promoted, and common visions developed.
 - A consultative group composed of international and domestic NGOs should be created to develop joint lobbying strategies including vis-à-vis the EU and also the multilateral processes at the UN, including the UPR.
 - **Victims' organisations should avoid influences from nationalist groups and politicians and find ways to cooperate with each other, going beyond ethnic lines.** Organisations should join forces on reparations for civilian victims of the wars in the 1990s.





Ministry of Foreign Affairs of the
Netherlands

Impunity Watch is a Netherlands-based, international non-profit organisation seeking to promote accountability for atrocities in countries emerging from a violent past. Impunity Watch researches the root causes of impunity, as well as obstacles to its reduction. We seek to directly engage affected individuals and communities in these processes. We promote their voices in the design and implementation of policies to encourage truth, justice, reparations, and the non-recurrence of violence and abuse. We encourage local actors' active involvement in transformations after violence, and also support informal initiatives that complement formal transitional justice mechanisms. The present report was produced within the strategic partnership with PAX as part of the Dialogue and Dissent policy framework of the Ministry of Foreign Affairs of the Netherlands.

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