

# Reparations after Conflict Related Sexual Violence: the Long Road in the Western Balkans

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## Abstract

This article focusses on the experience of providing reparation for survivors of conflict related violence in the Western Balkans after the 1990s conflicts. While there has been an increase in awareness of sexual violence as a war crime over the past two decades, the long-term effects of the crimes are still being felt by victims and their families. The article describes many of the challenges to implementing comprehensive reparation programs, including the limitations of judicial remedies, and the need to develop administrative remedies that are truly transformative and empower women to support sustainable peacebuilding. Reparation successes and failings in the Western Balkans may provide valuable lessons for other conflict and post conflict settings.

## Keywords

women – peace – security – conflict related sexual violence – women's rights

## Introduction

Some two decades after the end of conflicts in the Western Balkans, survivors of conflict related sexual violence (CRSV) are only beginning to receive reparations for the crimes that they endured. Sexual violence's systematic use to terrorise and displace populations as part of a campaign of "ethnic cleansing" across the region has been extensively documented.<sup>1</sup> The International

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<sup>1</sup> See for example information made available by the UN International Criminal Tribunal for the former Yugoslavia (ICTY) <http://www.icty.org/en/in-focus/crimes-sexual-violence>. One

Criminal Tribunal for the Former Yugoslavia (ICTY) historically ruled in 2001 that rape and other forms of sexual violence are war crimes, crimes against humanity and acts of genocide. But the establishment of the mechanisms to distribute reparations has taken an inordinate amount of time despite the existence of clear guidelines such as the *UN Secretary-General's Guidance Note on Reparations for Conflict Related Sexual Violence* (2014).<sup>2</sup> As sexual violence remains an acute threat in many current conflicts, it is important to learn lessons from the Western Balkans to help develop reparation programs that are more rapidly deployed, as well as, more effective and just.

Since the start of the wars in Western Balkans, the increased awareness of sexual violence's threats to peace and security, and effect on the lives of survivors and their communities, is evident in UN Security Council, UN Secretary General and member states' statements and resolutions.<sup>3</sup> According to UNSCR 1820, sexual violence is conflict related "when [it is] used or commissioned as a tactic of war in order to deliberately target civilians."<sup>4</sup> Under the Rome Statute of the International Criminal Court, committing rape, sexual slavery, forced prostitution and forced pregnancy constitutes war crimes.<sup>5</sup> In his 2016

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international women's organization that maintains a website on rape in war including in the Western Balkans is <http://www.womenundersiegeproject.org>. Films have also been made on the issue of wartime rape including *Nečujni Krik* (*Silent Scream*, 2014) and *In the Land of Blood and Honey* (2011).

- 2 Previous to this existed the 2005 United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.
- 3 On this increased awareness see Janie Leatherman, *Sexual Violence and Armed Conflict*, Cambridge: Polity Press, 2011, pp. 11–12. The Statute of the International Tribunal for the Former Yugoslavia (1993, Art.2, 5) and the Statute of the International Criminal Court (1998, Art, 7,8) refer to rape as war crimes and crimes against humanity. In addition relevant international legal instruments include but not limited to: the Declaration on the Protection of Women and Children in Emergency and Armed Conflict (1974); Additional Protocol I to the 1949 Geneva Conventions (1977); Convention on the Elimination of All Forms of Discrimination against Women (1979); Declaration on the Elimination of Violence against Women (1993); Resolution 1670 (2009) of the Parliamentary Assembly of the Council of Europe; and UN Security Council Resolutions 1325 (200) and 1820 (2008). See also Gabriella Citroni, *UN Women and Trial* (Swiss Association Against Impunity), *Between Stigma and Oblivion: A Guide on Defending the Rights of the Women Victims of Rape and other Forms of Sexual Violence in Bosnia and Herzegovina*, Sarajevo, 2012.
- 4 United Nations Security Council Resolution 1820, S/Res/1820 (2008), 19 June 2008.
- 5 UN General Assembly, Rome Statute of the ICC, 17 July 1998 (article 8.2).

report on women peace and security (WPS), then UN Secretary-General Ban Ki Moon heralded instances where reparation provisions were included in peace agreements (Colombia, Mali, Myanmar and South Sudan), while underlining that widespread sexual violence continues to destroy the very fabric of society in conflict and post conflict settings.<sup>6</sup> At the same time, in his most recent report on conflict-related sexual violence the Secretary General brought to the Council's attention 19 situations of concern and an updated listing of 48 parties credibly suspected of committing or being responsible for patterns of rape and other forms of sexual violence in situations of armed conflict.<sup>7</sup>

Increased awareness of CRSV has yet to be translated into the implementation of quick, effective, transformative, and comprehensive reparation programs for survivors. In the Western Balkans, the passage of time has not erased the scars of the crimes which women and men who survived sexual violence endured. Survivors in all parts of the region continue to experience significant physical, psychological, social and economic effects and face deep stigma often living in the very same communities where they were violated many years ago. Some of these effects have now been inherited by survivors' children and the cycle of disempowerment and shame continues.

This article aims to provide an update on reparation systems in the Western Balkans, especially in Bosnia-Herzegovina, Croatia and Kosovo,<sup>8</sup> to offer lessons learned for other countries in conflict or engaged in peace building. It is heavily informed by the discussions and findings of a June 2016 conference in Jahorina (Bosnia-Herzegovina) organized by UN Women, the International Organization for Migrations (IOM), and the Office of the High Commission on Human Rights which served as the regional launch of the UN *Secretary-General's Guidance Note on Reparations for Conflict-Related Sexual Violence* (GN) and provided a platform for some seventy civil society representatives, government authorities, experts from international organizations and individual advocates and survivors to discuss the successes of their reparation programs, setbacks and good practices.

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6 Report of the UN Secretary General on women and peace and security, 29 September 2016 (S/2016/822) [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/2016/822](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2016/822).

7 Report of the UN Secretary General on conflict related sexual violence, 22 June 2016 (S/2016/361/Rev.1) [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2016/361/Rev.1](http://www.un.org/ga/search/view_doc.asp?symbol=S/2016/361/Rev.1).

8 References to Kosovo throughout this article shall be understood to be within the context of United Nations Security Council Resolution 1244.

## Judicial Remedies to Conflict Related Sexual Violence in the Western Balkans

Full data on the incidence of CRSV against women and men will probably never be available. Determining the precise number of survivors is extremely difficult, not least due to the lack of effective monitoring and reporting during the conflicts, and is highly political. However, to prepare effective reparation programs an estimate of the number of men and women that they should serve is essential. Consequently, in Croatia when the start of a reparation program seemed politically feasible, an expert group carried out a detailed study, with various methodologies and estimated that between 1,470–2,437 survived sexual violence.<sup>9</sup> In BiH the figures are still highly controversial, with organizations such as Medica Zenica, which has deep and extensive experience working with survivors, stating that “during the war in Bosnia and Herzegovina (1992–1995) between 20,000 and 50,000 women and girls were systematically raped, sexually assaulted and tortured.”<sup>10</sup> In Kosovo in a publication of the UN High Commissioner for Human Rights, it is roughly estimates that there were 72–96 cases of CRSV.<sup>11</sup> While there were likely men and women who were victims

9 Ozren Žunec Dragan Bagić and Branka Galić, Luka Bulian, Marija Gašpar, Iva Ivanković, Marko Katavić, Kristina Pavlović and Maja Weisglass, *Assessment of the number of sexual violence victims during the Homeland War on the territory of the Republic of Croatia and optimal forms of compensation and support to victims*, Sociological research commissioned by the United Nations Development Program – Croatia Office, Zagreb, December 2013, p. 64. For personal accounts of women and a man from Croatia who survived sexual violence see Marija Sliskovic (ed), *Sunny*, Zagreb: Parvus, 2011.

10 Medica Zenica & medica mondiale e.V. (eds.) *We are still alive. We have been harmed but we are brave and strong*, A research on the long-term consequences of war rape and coping strategies of survivors in Bosnia and Herzegovina. Summary. Zenica & Cologne, 2014. p. 7.

11 The UN report concludes that “the existing available data on the number of cases are for different timeframes and in some cases overlap with one another. It is therefore not possible to draw any conclusions about the total incidence of sexual violence in Kosovo from these data. However, the existing literature provides the following data: OSCE documented 72 cases of sexual violence from October 1998 to June 1999. Human Rights Watch reported about six cases until December 1998 and 96 after March 1999. The High Commissioner for Human Rights in her report covering the period before June to August 1999, to the then-Commission on Human Rights reported 14 confirmed or suspected cases of rape and further indicated that the number of incidents may be higher.” Victoria S. Rames, *Healing the Spirit: Reparations for Survivors of Sexual Violence Related to the Armed Conflict in Kosovo*, Study commissioned by the Office the High Commissioner for Human Rights – Stand alone office in Kosovo. 2013, p. 40.

by conflict related sexual violence in other parts of the former Yugoslavia, not least in Serbia, the figures for these are even less precise and accessible.

International and national legislation affirms that the court system is responsible for providing justice for victims of sexual violence and ensuring accountability for the crimes committed. But the courts have been very slow in the former Yugoslavia. As of September 2016, thirty-two persons have been convicted for sexual violence crimes, in accordance with ICTY Statute article 7, paragraph 1. Four persons were convicted for failing to prevent acts of sexual violence.<sup>12</sup> According to an Organization for Security and Cooperation in Europe (OSCE) trial monitoring program, courts in the Federation of Bosnia and Herzegovina, Republika Srpska, and Brcko District between 2004–2014, issued final verdicts in one hundred and seventy-three cases dealing with crimes of sexual violence. Of these thirty-five cases contained charges for crimes of sexual violence which qualified as a war crime.<sup>13</sup> The OSCE assesses that “the overall number of conflict-related sexual violence cases that have been brought to trial remains low in comparison to the prevalence of such crimes.”<sup>14</sup> Not until 2015 did the first survivor from Bosnia-Herzegovina obtain financial compensation through criminal proceedings for the sexual violence that she was subjected to by two former Bosnian Serb security forces.<sup>15</sup>

Relying on the judiciary to secure reparations is fraught with challenges. Even though ICTY was crucial in developing recognition and understanding of sexual violence as a crime under international law, trials also exerted a heavy toll on survivors because of inadequate witness preparation and protection, aggressive cross-examination, lack of psychological counseling and support which left some feeling revictimised and humiliated.<sup>16</sup> As noted in a study by

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12 <http://www.icty.org/en/in-focus/crimes-sexual-violence/in-numbers>.

13 OSCE Mission to Bosnia-Herzegovina, “Combatting Impunity for Conflict Related Sexual Violence in Bosnia and Herzegovina: Progress and Challenges,” June 2015 <http://www.osce.org/bih/171906?download=true>, p. 12–13.

14 <http://www.osce.org/bih/171906?download=true>, p. 5

15 Trial International, News Release, 24.06.2015 <https://trialinternational.org/latest-post/bih-groundbreaking-court-decision-paves-the-way-for-wartime-victims-to-get-compensation/>.

16 On the trauma of giving evidence see Teufika Ibrahimefendic, “Traumatic Experience and Giving Evidence,” in *Rehabilitation of Victim's of Torture*, Journal of Articles, published by the Civic Association Vive Zene, Tuzla, 2013, pp. 29–46. ICTY is also aware of the trauma of testifying and reliving the past (<http://www.icty.org/en/in-focus/crimes-sexual-violence/reliving-past>) and has included in its Rules or Procedure Rule 96 that provides that corroboration of the testimony of a victim of sexual violence is not required (<http://www.icty.org/en/in-focus/crimes-sexual-violence/innovative-procedures>).

the Office of the UN High Commissioner for Human Rights in Kosovo, “the primary challenge is that in the judicial arena, survivors are likely to experience revictimization, including exposure to psychological harm, as well as reprisal, stigma and reproach from their communities.”<sup>17</sup> To receive financial compensation, in Bosnia-Herzegovina courts and prosecutors usually redirect survivors of sexual violence from criminal courts to civil ones where they often have to reveal their identity and have to incur additional legal costs which few can pay.<sup>18</sup>

The OSCE Mission to Bosnia-Herzegovina monitored war crimes cases in the domestic criminal justice system from 2004–2014, and analyzed 35 sexual violence cases completed by the entity level and Brčko District. The Mission concluded that there were a number of varied obstacles to investigating and prosecuting these cases, “including: lack of availability of evidence and suspects; lack of gender expertise in managing and conducting investigations and adjudicating sexual violence cases; insufficient prioritization of war crimes cases that include gender as a basis for prosecution; and varying degrees of support by law enforcement agencies to the entity level and Brčko District BiH prosecutor’s offices.” Lack of witness protection programmes at the entity level posed another challenge.<sup>19</sup>

Yet financial compensation and broader reparations are not only an international obligation but also a desperate need for the survivors of conflict related sexual violence and their communities. As Nuna Zvizdic, the Director of the Bosnian women’s organization Zena Zenama who has been working with survivors since the mid 1990s, describes:

*Rape is still largely a taboo and part of the sin of silence, to guard from the stigma that comes with it. Women who survived sexual violence are discriminated in realizing their social rights. Many have lost their family members; they are unemployed and live in poverty. Many of them have no health insurance (unable to pay for medication they need daily). Government institutions for social work and public health have no capacities to adequately work with the victims of rape,*

17 UN Office of the High Commissioner for Human Rights, *Healing the Spirit: Reparations for Survivors of Sexual Violence Related to the Armed Conflict in Kosovo*, 2013, p. 22.

18 Trial International, News Release, 24.06.2015 <https://trialinternational.org/latest-post/bih-groundbreaking-court-decision-paves-the-way-for-wartime-victims-to-get-compensation/>. For example on 30 April 2013 a rape survivor succeeded in obtaining a 3-year prison verdict against the perpetrator of rape and war crimes from a court in Republika Srpska but she was referred to civil courts for compensation. Trial International, News Release, 30.04.2013 <https://trialinternational.org/latest-post/courageous-struggle-of-a-rape-survivor-rewarded-at-last/>.

19 <http://www.osce.org/bih/171906?download=true>, p. 6.

which makes their social inclusion even more difficult, and so women's NGOs continue to be the main providers of assistance and protection for the victims of sexual violence.

*We often forget the fact that, with time, witnesses (women and men) who are crucial for rape cases age and die.*<sup>20</sup>

Relying on the court system has therefore proven to be unsatisfactory to deal with the large number of cases, and to meet survivors' multiple needs.

### **Administrative Reparations for Survivors of Conflict Related Sexual Violence in the Western Balkans**

The experience of the Western Balkans has revealed the utility of shifting emphasis from criminal procedures towards administrative solutions that put less of a burden of proof on survivors and focuses more on their multiple complex psychological, social, financial and other needs. Administrative measures are also more flexible and appropriate to respect the principles the UN Secretary General's Guidance Note on Reparations for Conflict Related Sexual Violence (2014).

International law establishes different forms of reparations including compensation, rehabilitation, satisfaction, restitution and guarantees of non-repetition.<sup>21</sup> Recent legislation passed in Bosnia-Herzegovina, Croatia and

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20 Memnuna Zvizdic, Director Zena Zenama, presentation at the Workshop on the Military Guidelines on the Prevention of, and Response to, Conflict Related Sexual and Gender Based Violence, Royal Military Academy-NATO, 9 October 2016, Brussels. According to a study by Medica Zenica of 51 rape survivors, 57% said that they are still suffering from Posttraumatic Stress Disorder around twenty years after the war rape. Medica Zenica & medica mondiale e.V. (eds.). *We are still alive. We have been harmed but we are brave and strong*, A research on the long-term consequences of war rape and coping strategies of survivors in Bosnia and Herzegovina. Summary. Zenica & Cologne, 2014. p. 10.

21 According to the Basic Principles *Compensation* should be provided for any economically assessable damage such as: (a) Physical or mental harm; (b) Lost opportunities, including employment, education and social benefits; (c) Material damages and loss of earnings, including loss of earning potential; (d) Moral damage; (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services. *Rehabilitation* should include medical and psychological care as well as legal and social services. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>.

Kosovo tends to focus on the first two forms: compensation and to some lesser extent, rehabilitation.

Laws that give survivors of conflict related sexual violence access to reparations in Bosnia-Herzegovina, Croatia and Kosovo using administrative measures are recent. It was a long struggle to include survivors of sexual violence in national legislation which was originally drafted primarily for veterans, and military victims of the armed conflict.<sup>22</sup> The Federation of Bosnia-Herzegovina was the first in 2006 to include CRSV survivors as a sub-category of civilian victims of war, and to explicitly make them eligible for financial compensation (without having to prove disability). In Republika Srpska, it was only in 2016 that a new law on the protection of victims of war torture, including sexual violence survivors was adopted (and it waiting parliamentary approval). In Kosovo in 2014 “the Law on the Status and the Rights of the Martyrs, Invalids, Veterans, Members of the Kosovo Liberation Army, Civilian Victims of War and their Families” was amended to also include a specific reference to “Sexual Violence Victims of the War.” In Croatia in 2015 the “Act on the Rights of Victims of Sexual Violence during the Military Aggression against Republic of Croatia in the Homeland War” was passed opening the way for an administrative reparation program.

The reparation programs being applied in the Western Balkans are novel, because they do not involve criminal or civil courts, but commissions of experts in Croatia, the Federation of Bosnia-Herzegovina and Kosovo.<sup>23</sup> In Croatia this together with the application of the principle of *bona fide* (good faith) in the commission’s procedures, has lifted some of the burden of proof and risk of re-traumatization through testimony, as survivors are no longer obligated to bring in detailed medical records and other forms of proof, and do not have

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22 Such was the case in Croatia, in the Federation of Bosnia-Herzegovina with the Law on the Basis of the Social Protection, Protection of Civilian War Victims and Protection of Families with Children (1999) and in Kosovo with the Law on the Status and the Right of the Martyrs (2011). This original legislation generally demanded a percentage of physical disability to offer reparations, usually in the form of monthly pensions.

23 In Croatia in 2015 a Commission for the Victims of Sexual Violence, which should have a four-year term, was charged with reviewing the information submitted to decide whether the prospective beneficiary would receive benefits. But in Fall 2016 several members of the experts Commission for the Victims of Sexual Violence were removed from their post by the new government without due process. In Kosovo the 2014 law stipulated a government commission be established, composed of one representative each from office of Prime Minister, Ministry of Labour, Ministry of Justice, Ministry of Health, Institute for War Crimes, as well as a psychologist, a psychiatrist, a lawyer, and a civil society representative with SGBV support experience.



to face an adversary. The reparation programs that are being legislated aim to be comprehensive, usually providing an initial compensation award, monthly stipends, access to free health care, priority in housing, psychological and legal help, and in some case priority in public and private employment (Federation of Bosnia-Herzegovina; Kosovo). Yet they also include some limitations. Time limitations are imposed: in the Kosovo case only those who experienced sexual violence between 27 February 1998 and 20 June 1999 are eligible to apply; and they have to apply no later than five years after the start of the review commission's work. In the Croatian case, only those who are Croatian citizens can refer to the commission, even though some survivors who experienced crimes in Croatia have since taken on other citizenships. Positively, commission members claim that not all who have approved for compensation are ethnic Croatian.<sup>24</sup>

According to the *UN Secretary-General's Guidance Note on Reparations for Conflict Related Sexual Violence* (2014) reparations should follow eight basic principles to be most effective.<sup>25</sup> In the case of the Western Balkans, as reparation programs have been legislated and are being set up decades after the conflicts, the principles now vary in relevance. As experts and practitioners have pointed out, currently the most relevant principle is for reparations to strive to be transformative, including in design, implementation and impact.<sup>26</sup> To be transformative signifies challenging pre-existing gender inequalities, such as regarding access to property and the freedom to work. As Leatherman has pointed out in her seminal book *Sexual Violence and Armed Conflict*,

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24 Interview with a commission member, Zagreb, April, 2016.

25 According to the Guidance Note: 1) Adequate Reparation for victims of conflict-related sexual violence entails a combination of different forms of reparations 2) Judicial and/or Administrative Reparations should be available to victims of conflict-related sexual violence as part of their right to obtain prompt, adequate and effective remedies 3) Individual and collective reparations should complement and reinforce each other 4) Reparations should strive to be transformative, including in design, implementation and impact 5) Development cooperation should support States' obligation to ensure access to reparations 6) Meaningful participation and consultation of victims in the mapping, design, implementation, monitoring and evaluation of reparations should be ensured 7) Urgent interim reparations to address immediate needs and avoid irreparable harm should be made available 8) Adequate procedural rules for proceedings involving sexual violence and reparations should be in place. United Nations, *Guidance Note of the Secretary-General on Reparations for Conflict-Related Sexual Violence*, June 2014.

26 This was one of the conclusions of the Jahorina conference organized Jahorina in June 2016.

*“Sexual violence in conflict does not develop in isolation from the society’s pre-existing socioeconomic and culturally shaped gender relationships. The extent of gender based violence (GBV) in society is a predisposing condition for sexual violence in war and is a principal reason why women and girls in countries with high levels of gender based discrimination and inequality are at much greater risk of victimization.”<sup>27</sup>*

Therefore, for reparations to have long term sustainable effects they need to address the broader context of inequality that makes women vulnerable to violence, and to subsequent discrimination and stigma. This require reparations programmes to be broader than a one-off cash payment and to address gender empowerment issues such as access to land, inheritance, credit, employment, education, health and psycho-social services. Reparations should also provide access to income-generating opportunities so that survivors in rural and urban areas can begin to rebuild their lives. Ultimately, transformative reparations mean investing in gender equality, because societies where there is sustainable peace, are invariably societies where men and women are most equal.

Transformative reparations that empower women are essential to sustainable peace, because sexual violence during conflict is, among other things, intended to disempower women and men and destabilize communities. It is used as a tool of war, because perpetrators understand how these acts break down individual, social and family structures through physical and psychological damage and stigmatization. Sexual violence is a way for combatants to subjugate populations and mitigate resistance over the long term, even after peace agreements are signed. For reparations to be truly transformative, they must proactively empower victimized individuals, families and communities. In this regard, creating and implementing reparation programs can be empowering for survivors if they are included, rather than simply treated as subjects or beneficiaries. As survivors point out, all too often, authorities and experts speak on their behalf, processes do not take into account their perspectives, agencies discount their inherent capacities, and their communities lack information on reparations and why they are receiving them. However, as civil society leaders argue, engaging survivors in advocacy, negotiation, design, implementation, outreach and monitoring of the procedural rules and mechanisms for reparations—in addition to providing ‘traditional’ benefits—is often a prime source of empowerment for survivors.

The setting up of reparation programs have also represented one of the most impactful results of the work and advocacy of women’s groups and mental

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<sup>27</sup> Janie Leatherman, *Sexual Violence and Armed Conflict*, Cambridge: Polity Press, 2011, pp. 3–4.

health professionals in the Western Balkans. The collection of evidence of conflict related sexual violence was carried out by mental health professionals and activists in women's organizations during the wars in the Western Balkans, and in the immediate aftermath. The work of these front-line responders ensured essential and immediate care for women survivors and their families in the 1990s. Subsequently several of the women's organization took up the needed activism to convince their governments to set up and improve reparation programs, and they thereafter supported survivors apply for reparations.<sup>28</sup>

### Learning Lessons from Each other

Since the war years, there has been a tremendous amount of sharing of lessons and experiences between civic activists working on issues related to CRSV throughout the former Yugoslavia and victims' associations. While much of this solidarity originally involved sharing of approaches to deal with trauma after CRSV and to effectively collect evidence of CRSV crimes, in the longer term it has been linked to the development, advocacy for and implementation of reparation programs. While Croatia was the first country to establish a fully fledged reparation program, by 2016 the Federation of Bosnia-Herzegovina has the most comprehensive legal framework and is actively sharing its know-how with Kosovo. In the Federation there are currently seven hundred and seven women that are receiving some forms of reparation.<sup>29</sup>

But why had it taken some two decades to begin implementing comprehensive reparation programs and why aren't more survivors applying to take advantage of them? According to participants from the Jahorina conference, factors include:

**The lack of prioritization of reparations programs by international actors.** Even though at least \$3.5 billion is estimated to have been spent in Bosnia-Herzegovina from 1996–2000 to support various forms of post conflict peace-building and reparation, little or no funding was sent aside for survivors of

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28 Examples of women's organizations that have been involved in this work include: The Center for War Victims in Croatia. "Compensation for Croatian Survivors of Sexual Violence in Conflict, 20 Years after the War," *Global Fund for Women*, <https://www.globalfundforwomen.org/rosa-croatia/>. Vive Zene and Medica in Bosnia-Herzegovina and Medica Kosova and Kosova Women's Network in Kosovo.

29 Memnuna Zvzdic, Director Zena Zenama, presentation at the Workshop on the Military Guidelines on the Prevention of, and Response to, Conflict Related Sexual and Gender Based Violence, Royal Military Academy-NATO, 9 October 2016, Brussels.

CRSV.<sup>30</sup> Substantial amounts were spent on the investigation and prosecution of war crimes, disarmament and demobilization and security sector reform but this did not extend to addressing CRSV. In the Bosnia-Herzegovina case even though there was widespread public understanding that rape had been used as a weapon of war, there was little awareness amongst international supervisors or national authorities that reparation programs could or should be set up for survivors as a part of their peacebuilding and development efforts. International legal experts, also tended to privilege justice mechanism such as reference to the International Criminal Tribunal for Yugoslavia, rather than locally run reparation efforts.

**The lack of clarity on who should fund reparations.** Time was lost in the Western Balkans while the argument persisted that “whoever committed the crimes, should pay for the reparations.” In the majority of the cases in Croatia and Bosnia-Herzegovina, this would signify that Serbia should pay. The debate also extended to whether the state should have the responsibility for paying or this should fall on the individual perpetrator. Ultimately international experts convinced governments in Bosnia-Herzegovina, Croatia and Kosovo that they should pay their citizens because they had failed to protect them. Serbia has refused this approach. The limitation in the other three cases is that generally it is only citizens currently living on the state’s territory that can claim reparations – not for example Serbs from Croatian Krajina who fled to Serbia and still live there.

**Stigma.** Throughout the Western Balkans, but also in European capitals where decisions were made on post-war programming, sexual violence was and remains a deep taboo. Political leaders found it very difficult to discuss the topic and to publicly embrace survivors. Stigma also obstructed compassion and empathy in local communities where survivors and their children were often left isolated and discriminated against. In this environment, there was little public pressure on governments to set up reparation programs and survivors’ voices tended to be muted. War veterans for example were much more successful in obtaining stipends, and guaranteeing that they were preserved over the years, because they did not suffer from any stigma.

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30 According to the World Bank Mission to BiH, some 5.3 billion KM (local currency) or 3.5 billion USD were spent on the reconstruction of basic infrastructure, educational and health care institutions/facilities, and repair and reconstruction of housing between 1996–2000. Merima Zupcevic and Fikret Causevic, *Case Study: Bosnia and Herzegovina*, Center for Developing Area Studies, McGill University and the World Bank. Sarajevo, 2009 p. 15 Much more was used on sustaining the NATO, OSCE and EU missions.

**Access for survivors is challenging.** Especially in Bosnia-Herzegovina the number of women who have applied for reparations is small compared to the estimated number of survivors. Medica Zenica asked women about their experiences and close to half reported either difficulties with the administrative procedures and or that the whole procedure of obtaining the status often includes exposure to shameful, uncomfortable situations. Furthermore Medica found that whereas those having obtained the status had access to their monthly stipend, only 6–8% also accessed other special programmes entailed in the status.<sup>31</sup> Women may not be fully informed of their rights, they may be physically located in rural areas where few support services are available, or without sustained psychosocial support, they may simply feel after so many years, that it is too late to seek fundamental change and empowerment.

**The severity of the crime not the scope of the need was the main criteria for the allocation of compensation.** Before specific reparations were set up for survivors of CRSV, persons could apply for compensation for as civilian victims based on the percentage of their physical invalidity. As it is extremely difficult to measure the mental and psychological effects of sexual violence, survivors struggled to prove the impacts of CRSV. One way to deal with this has been to provide all survivors of CRSV with the same reparation package. Another suggestion, that was raised at the Jahorina conference, was to scale reparations to the scope of the need of the individual.

## Conclusions

As the Western Balkans case demonstrates, even though there is an international legal right to reparations, and their importance to victims and post conflict peacebuilding is evident, reparation programs have too often failed to address CRSV survivors' needs and priorities, and have been too little, too late. For reparation programs to be effective they should 1) acknowledge survivors' rights to justice and reparations without causing undue re-traumatization and a heavy burden of truth 2) be accessible to all survivors regardless of their level of disability, current geographic location, psycho-social state 3) contribute to transforming the underlying gender equalities that exist(ed) in society 4) be designed and implemented in close cooperation and with the involvement

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31 Medica Zenica & medica mondiale e.V. (eds.). *We are still alive. We have been harmed but we are brave and strong*, A research on the long-term consequences of war rape and coping strategies of survivors in Bosnia and Herzegovina. Summary. Zenica & Cologne, 2014. p. 12.

of survivors themselves, medical health professionals and representatives of civil society organizations. Today twenty years after the wars in the Western Balkans, reparations programs should also be accessible for the children of survivors and conflict related sexual violence should be addressed in school curriculums in a way to prepare the next generation to address survivors with sensitivity and to reject sexual violence as a means to disempower the other.

Today reparation programs have also been designed and suggested for other post conflict contexts, such as in East Timor, Sierra Leone, Guatemala, Peru and now Colombia.<sup>32</sup> They may become relevant in Ukraine, where the Office of the High Commissioner for Human Rights (OHCHR), published a 16 February 2017 report detailing 31 cases that illustrate broad patterns and trends of conflict-related sexual violence documented.<sup>33</sup> Yet in many of the cases where reparation program have been set up, “unfortunately implementation is very weak or totally absent.”<sup>34</sup> As the Western Balkans case demonstrates, it is not enough to set up reparation programs, but they also have to be timely, transformative, and accessible, to contribute to sustainable peace.

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32 Joint statement by Phumzile Mlambo-Ngcuka, United Nations Under-Secretary-General and Executive Director of UN Women, and Zainab Hawa Bangura, United Nations Under-Secretary-General and Special Representative of the Secretary-General on Sexual Violence in Conflict, on the historic commitment by the Government of Colombia and FARC-EP at the Havana Peace Talks Table, 26 July 2016 – See more at: <http://www.unwomen.org/en/news/stories/2016/7/joint-statement-by-phumzile-mlambo-ngcuka-and-zainab-hawa-bangura#sthash.3iUN403f.dpuf>.

33 OHCHR, Conflict-Related Sexual Violence in Ukraine 14 March 2014 – 31 January 2017, published 16 February 2017.

34 Megan Bastick, Karin Grimm, Rahel Kunz, *Sexual Violence in Armed Conflict: Global Overview and Implications for the Security Sector*, Geneva Centre for the Democratic Control of Armed Forces, 2007. p. 162.

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