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Effectiveness of Transitional Justice Initiatives in the Context of Sexual  
Violence during the Bosnian War

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The 1992-1995 war in Bosnia was characterised by the extensive use of gender-targeted sexual violence as an instrument of war and terror. Following the Dayton Peace Agreement, the international community began to devise a variety of transitional justice mechanisms to deal with the mass human rights abuses. 25 years later, this paper seeks to not only understand the shortcomings of the ICTY, but to explore beyond the scope of legalism by paying particular attention to the needs of survivors. This paper will look at the variety of ways in which transitional justice initiatives have been ineffective in providing appropriately long-term and comprehensive care to survivors.

## Confirmation

I confirm that I am the author of submitted thesis: *Effectiveness of Transitional Justice Initiatives in the Context of Sexual Violence during the Bosnian War*, which has been prepared independently and has never been presented for any other course or used in another educational institution, neither in Lithuania, or abroad. I also provide a full bibliographical list which indicates all the sources that were used to prepare this assignment and contains no un-used sources.

Anne, Fukatsu    Signature

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To my best friend, Linn – thank you for being my grounding voice of reason and self-compassion.

To my Vilnius family; Maro, Keto, Sameto – thank you for supporting and encouraging me. I couldn't have done this without you.

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## 1. Introduction

The War in Bosnia was an international armed conflict occurring in Bosnia and Herzegovina between 1992 and 1995, following the breakup of Yugoslavia. The multi-ethnic area was inhabited by Muslim Bosniaks, Orthodox Serbs and Catholic Croats. As Bosnia-Herzegovina declared independence, civil war broke out amongst the various ethnic groups.

The use of sexual violence was widespread during the Bosnian War as part of an ethnic cleansing programme. In understanding the complexities and layers of this conflict, it is important to note the gender-targeted nature of this genocidal ethnic cleansing campaign. (Doja, 2019, p. 541-580). Though all ethnic groups were guilty of committing sexual violence, the vast majority was perpetrated on Muslim Bosniaks by Bosnian Serb forces and Serb paramilitary, for whom sexual violence was a key tactic to subjugate, humiliate and traumatise the undesired ethnic group. (Bell, 2018, p.3). Estimates of female victims of rape range anywhere from 20,000 to 50,000. (Multiple NGOs, 2015, p. 5). Women were repeatedly gang-raped, at times by more than forty men in one day. So-called “rape camps” – such as the one at Foča – were established by Serb forces; camps where girls and women were continuously subjected to sexual violence and humiliation, being released only once forcefully impregnated and abortion no longer feasible. The rationale behind this was to “dilute” the Bosniak bloodline and forcefully remove the undesired ethnic group from the area through humiliation, ensuring they do not return. The strategy of mass rape and forced impregnation was dictated by Serbian authorities. (Salzman, 1998, p. 359).

The Dayton Peace Accord (DPA) of 1995 incorporated the Bosnia and Herzegovina constitution. This effectively divided Bosnia–Herzegovina into two separate entities: the Bosnian-Serb Republika Srpska and The Federation of Bosnia and Herzegovina, where Muslim Bosniaks and Bosnian-Croats live together.

The case of Bosnia and Herzegovina has played a historic role in the advancement of prosecution of wartime sexual violence; the International Criminal Tribunal for the former Yugoslavia (ICTY) conducted investigations into reports of systematic detention and rape of women, men and children – thereafter becoming the first international criminal law tribunal to declare rape as a form of torture, and sexual enslavement during times of war to be considered a crime against humanity. The ICTY was also the first international tribunal based in Europe to declare rape a crime against humanity (Article 5 of the ICTY Statute). In the



Bosnian context, charges of crimes against humanity are targeted at the ethnic cleansing. (Buss, 2002, p. 91-95).

Though wartime sexual violence has been prevalent for as long as war has existed, it was not until the early 1990s that the scholarly research community began to earnestly probe into the topic. Though no clear definition of transitional justice exists, using a variety of literature, a broad definition can be distinguished: the set of mechanisms employed to address large-scale human rights violations in countries emerging from periods of conflict (Teitel, 2003, p.69-70; Roht-Arriaza, 2006, p.1; ICTJ website). Traditionally, such mechanisms include prosecutions, truth commissions, reparations, and institutional reforms (UN, 2010; ICTJ). Contemporary transitional justice has, however, expanded beyond these initiatives. It is now seen as all the measures a society undertakes in order to deal with past mass violations of human rights and extends itself to not only states, but also private actors. (Teitel, 2003, p.74). Measures may vary from prosecutions to reparations, reconciliation and memorialisation.

Granted, the subject of transitional justice in the case of Bosnia and Herzegovina has been researched in the past. This thesis, however, seeks to explicitly research why transitional justice initiatives in the context of sexual violence during the Bosnian War have been ineffective. Due to the gender-targeted approach of sexual violence which took place, a holistic, gendered reading and approach are essential in analysing transitional justice measures in Bosnia and Herzegovina (Delaet, 2008, p.323-325). The taboo nature of wartime sexual violence along with the conservative nature of Muslim Bosniak culture – specifically surrounding its female population – compounds the relevance of this research. Indeed, the ICTY accomplished a number of landmark judgements responsible for the advancement of the development of international justice in the realm of gender crimes. 25 years later, as per the ICTY, “*More than seventy individuals have been charged with crimes of sexual violence including sexual assault and rape. As of early 2011, almost thirty have been convicted.*”. Nevertheless, current research on the impact and effectiveness of the ICTY have shown that there leaves much to be desired. Clark (2016) has highlighted a number of shortcomings in the context of rape and sexual violence prosecution within the ICTY, including lack of adequate preparation & support; witness protection issues; difficulties & trauma of actually testifying and post-testimony neglect. A pilot study seeking to scientifically survey, analyse and understand the nature of the witness population at the ICTY has also found several shortcomings, including lack of satisfaction in the punishment by the ICTY of those responsible and the length of the processes (ICTY Pilot Study, 2016, p.121). Meernik & King

(2017, p.91) also found that a sizeable number of witnesses experienced exclusively negative economic consequences. The ICTY's mandate came to an end in 2017 and began transferring jurisdiction for prosecution of wartime sexual violence to Bosnia and Herzegovina in 2004 (ICTY website).

Transitional justice, however, concerns itself with both judicial and non-judicial measures. This research will therefore seek to go one step further and investigate beyond the scope of judicial measures. Consequently, particular emphasis will be placed on analysing why these transitional justice initiatives were ineffective in the context of conflict-related sexual violence during the Bosnian War. 25 years later, the aim of the research is to compile the currently scattered literature examining the various ways in which transitional justice measures have been ineffective for survivors of sexual violence during the Bosnian War. A look at existing literature and various up to date reports will point us in the direction of inadequate institutional reform, and a general failure to follow a survivor-centred approach, including a lack of psychosocial support and appropriate compensations.

One should now focus on engaging resources on analysing transitional justice measures beyond judicial capacities, particularly with the advantage of the time which has passed since the end of the war, so as not to undermine the undeniably ground-breaking achievements of the ICTY. Further research must be carried out in order to further remove the stigma surrounding survivors, as well as improve transitional justice measures by taking into account gender politics, and placing survivors' voices and needs at the forefront of these measures.

This thesis will begin by analysing existing literature review to gain an understanding of transitional justice and to establish which are the key aspects of "effective" transitional justice. Thereafter, a list of criteria will be determined and used as the theoretical approach through which to analyse the effectiveness of the various transitional justice mechanisms employed with regards to sexual violence in the Bosnian War.

The first section will focus on legal and accountability aspects of transitional justice. These will include formal recognition of wrongdoings, perceived appropriateness of punishment, and conflict-related sexual violence training of relevant staff, judges, and prosecutors.

The second section will continue by focusing on the psychological, social, economic and medical aspects of transitional justice. These will include victim protection and support, long-term psychosocial care and sufficient long-term financial support.

The last section will focus on the basis of a holistic approach to transitional justice, and will

focus on the democratisation of the transitional justice process, a gender- and culture-sensitive approach and the solicitation of women and survivors' needs.

## 2. Advanced literature review

An overview of literature available on transitional justice allows us to establish what transitional justice consists of, its goals and how it should be carried out, as well as providing us with a large number of criteria which are claimed to demonstrate the success, or lack thereof, of transitional justice measures. Though the evaluation of transitional justice repercussions and outcomes is, naturally, a core element in the most recent research, what constitutes “success” remains controversial. Merging different ideas based on current literature by different authors, this thesis will produce its own understanding of TJ and how to judge its effectiveness or ineffectiveness. As such, the literature review used in this thesis will be used as the theoretical approach by providing the guidelines on how to carry out the empirical analysis of the Bosnian case in order to answer the research question: “why were transitional justice initiatives in the context of sexual violence during the Bosnian war ineffective?”

### 2.1 Defining Transitional Justice

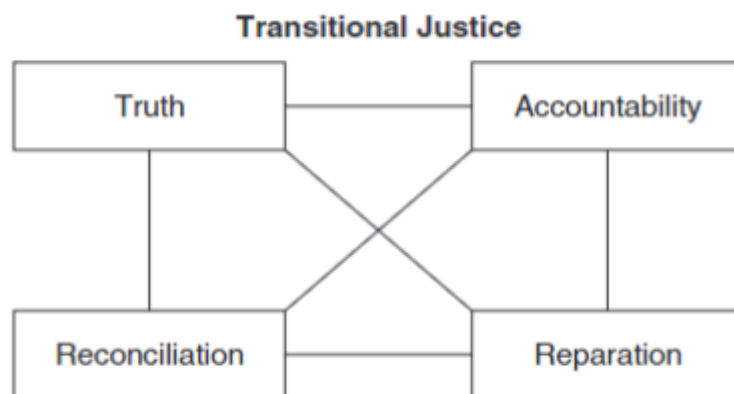
A clear definition and conceptual basis of transitional justice will allow us to analyse and evaluate the effectiveness of transitional justice measures. However, transitional justice is a broad term with no clear definition. The very concept of transitional justice, though often mentioned, is scarcely defined and is, as such, a label or “cloak”. While definitions of transitional justice are abundant, all view transitional justice as the attempt to deal with past violence in societies experiencing or pursuing some form of political transition. The importance of an interdisciplinary approach, integrating the perspectives of activists, policy makers and academics is also emphasised. (Bell, 2008, p. 7). Nagy (2008, p.275) elaborates that the concept of transitional justice is one which deals with international societies. The international community comes together with an ambition to establish several means of reckoning with the past, thereby laying the first building blocks of democracy, human rights, and rule of law.

One of the most widely cited transitional justice scholars, Teitel (2003, p.69), defines transitional justice as “the conception of justice associated with periods of political change,

characterized by legal responses to confront the wrongdoings of repressive predecessor regimes”. By providing a genealogy of transitional justice, Teitel illustrates that, over time, a close relationship between the type of justice pursued and the relevant limiting political conditions is demonstrated. She divides this genealogy into three phases. During Phase I, the aim of justice was to define unjust war and to establish the parameters of justifiable punishment by the international community. This first phase of transitional justice linked interstate cooperation, war crimes trials and sanctions. Phase I’s proclaimed objective was accountability. Teitel claims the post-1989 phase II model of transitional justice was restorative, this time deviating from trials and moving towards mechanisms designed to foster truth and reconciliation. The transitional model of phase II takes into account rule-of-law understandings in the context of a particular political community and local conditions – therefore, phase II can be said to represent a move towards a somewhat more local or privatised conception of justice. Phase III is the current model, displaying the normalisation of transitional justice. It is characterised by an expansion of international humanitarian law. Each time, international justice is essentially redefined and transformed by past precedents and new political contexts. Contemporary transitional justice has hence expanded and now extends itself to not only states, but also private actors. (The same, p. 72-74). By providing 3 phases, Teitel’s research provides the valuable viewpoint that justice, as a result, is an ever-changing concept which must be taken into account in the context of the local and temporal frame.

Clark (2013) identifies the current approach to the definition of transitional justice as being a three-sided polygon consisting of a comprehensive, purpose-driven and relationship-driven perspective. It is comprehensive because it considers the effects and influences of various disciplines, contexts, goals and mechanisms which affect the field of transitional justice. It is purpose-driven because it defines transitional justice in terms of its objectives. Lastly, it is relationship-driven because it considers the potential for “interrelated, interdependent, and complementary relationships” between the main goals and measures, rather than understanding them as competitive alternatives. Using Parmentier’s TARR heuristic model (Fig. 1), Clark identifies two limits: firstly, transitional justice is limited to the context of societies undergoing transition after a period of gross violations of international human rights, international humanitarian law, and international criminal law. Secondly, in these transitioning societies, all aspects of justice have essentially crumbled – it is therefore the goal of transitional justice to restore these. As such, transitional justice must be understood

as a goal-oriented concept comprising four critical objectives: truth, accountability, reparation, and reconciliation. Furthermore, transitional justice is not a binary concept, but rather a continuum. In other words, transitional justice is the final product of the synergy between these four goals. (Clark, 2013, 749-750).



**Fig.1: TARR model of key issues in the search for transitional justice**

In particular, Clark highlights the unique circumstances of every post-conflict society. Due to the differences in every society, community, and individuals’ culture and self-identity, each post-settlement society will attribute differing values to each of these four objectives. This definition will help us to establish a criterion with which to analyse the ineffectiveness of TJ measures with regards to conflict-related sexual violence in Bosnia and Herzegovina, namely, by attempting to assess effectiveness specifically in the context of the Bosniak Muslim culture’s and survivors’ perceived values of the various initiatives.

<b>TJ as redress of mass human rights violations</b>	<b>TJ as holistic &amp; beyond legalism</b>	<b>TJ as a continuum</b>	<b>TJ as interrelated/synergy of goals</b>
<i>Ruti Teitel, Naomi Roht-Arriaza, ICTJ, Rosemary Nagy</i>	<i>Christine Bell, Pablo De Greiff, Theresa M. Clark</i>	<i>Ruti Teitel, Pablo De Greiff</i>	<i>Theresa M. Clark, Pablo De Greiff</i>

## **Fig.2: Key attributes in defining “effective” transitional justice and their authors**

De Greiff (2012) describes this undertheorised field as a broad label that refers to an array of provisional measures applied to post-agreement scenarios, leading to various outcomes. De Greiff uses the UN Secretary-General’s Report, “The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies” to clearly list the various main constituents of a transitional justice policy, these being: criminal justice, truth-telling, reparations, and vetting. In accordance with the Secretary-General’s Report, De Greiff makes a point of claiming that transitional justice should be conceived of holistically; a claim which, in practice, often clashes with governments’ and others’ tendencies to believe that the different measures can be substituted for one another. He highlights the fact that forging links between the various TJ initiatives leads to better outcomes than having them operate in isolation (De Greiff, 2012, p.38). De Greiff also acknowledges the lack of consensus surrounding transitional justice. (The same, p. 31-32). De Greiff attributes four goals – recognition, civic trust, reconciliation, and democracy – which should not be conceived of temporally; once again, the concept of transitional justice as a continuum emerges. De Greiff recognises that no transitional country can claim to have had great success in this field. No country has undergone a transition that has prosecuted each and every perpetrator of human rights violations, that has implemented a reparations programme providing each and every victim with benefits proportional to the harm they suffered and so on (The same, p. 35). Using De Greiff’s holistic philosophy, this research will assess whether transitional justice measures in the context of sexual violence during the Bosnian War were indeed conceived holistically, or perhaps substituted for one another. The importance of a holistic approach translates to the use of mechanisms beyond mere courts and TRCs.

After reviewing the aforementioned literature, several more aspects have become apparent. Elaborating on the initial broad definition presented in the introduction, the definition of TJ adopted in this thesis will be one which also considers the importance of viewing TJ beyond the scope of legalism; the importance of using a culture-appropriate approach; the importance of a holistic approach without viewing the varying measures as competitive alternatives and, lastly, the importance of viewing TJ as a continuum.

## 2.2 Transitional Justice Goals

Nagy (2008) remarks on the international community's worrisome tendency to apply a universal, "one-size-fits-all" approach – one which, she argues, provides technocratic and decontextualised solutions. Despite transitional justice's aim of truth-seeking, it is denounced as lacking proper vision in terms of gender and social injustice. Its Western liberal approach may be far removed from, and non-transferable to, the locations, cultures, and societies in which it is hoped to be effective. This Western notion of transitional justice may, to an extent, be perpetuating theories on the West's role as a "saviour", particularly with regards to those presumed "less civilised" and "savage" ethnic, and particularly African, "tribal" conflicts. (Nagy, 2008, p. 276). Too often, the international community has failed to provide assistance that is appropriate to the country context. Too often, the process has relied on foreign experts, foreign models, and foreign-conceived solutions. Such approaches fail to cultivate lasting improvements and sustainable capacity. Effective approaches are sustainable; they thoroughly analyse the national needs and capacities and strive to assemble expertise resident in the country. The implementation of transitional justice mechanisms must abstain from one-size-fits-all approaches and the importation of foreign models, instead basing assistance on "national assessments, national participation and national needs and aspirations".

Furthermore, strategies of assessment and consultation must be carried out with the active participation of national stakeholders, including women and civil society. (UN Report of Secretary General, 2004, p.6). Lundy & McGovern (2008) further advocate for a shift away from the top-down, one-size-fits-all approach by replacing it with popular participation and local agency. In practice, popular participation means granting the local population further ability to define problems and conceptualise and design their own programmes; such an approach would arguably provide a development that is sustainable after foreign donors leave (Lundy & McGovern, 2008, p.280).

Decisions regarding transitional justice have been made without consulting the affected population for far too long. One such example can be found in Sierra Leone, following the end of the civil war. The Sierra Leonean government, in conjunction with the UN, were responsible for the decisions to create the Special Court and the Truth and Reconciliation Commission (TRC). As such, these institutions were established without soliciting the local population on their needs, expectations and demands. (Lambourne, 2008, pp 28-29). For survivors of sexual violence, it is particularly important that they be solicited. Decision makers from the "outside" – in terms of both location and situational context – may be out of

touch with survivor's needs and expectations, consequently affecting the grassroots' perception of justice served. Lambourne stresses the importance of transitional justice focusing on and engaging the local population. The local population must be involved in the decision making and the development of transitional justice mechanisms that align with the local customs, culture, and needs. Conflict participants must be reorganised as subjects rather than mere objects so as to ensure the needs of survivors are met. Lambourne found that a higher chance of success in longstanding peacebuilding is more likely through the democratisation of the transitional justice process with local ownership and capacity building. (Lambourne, 2008, p.47).

The UN Security Council report of the Secretary-General also highlights the unfortunately usual reliance on foreign experts, models, and solutions. Expertise resident in the country in question must be mobilised. Furthermore, the United Nations is looking to implement strategies including the participation of national stakeholders, including civil society, traditional leaders and key groups such as women and minorities. The quantity and quality of public and victim consultation is also a key element in the success of transitional justice experiences. Support for reform must be propagated at all levels and groups of society. Most importantly, the country's victims must be considered – their needs and interests assessed and respected in the design and implementation of transitional justice measures. (UN Secretary-General Report, p.6-7).

Waging wars and the act of negotiating peace agreements have both been matters primarily undertaken by men. Additionally, it is overwhelmingly men (both state and non-state protagonists to the conflict and international mediators) who negotiate the very mechanisms of TJ. These negotiation processes tend to be focused on ceasefires, governmental arrangements, and divisions of territory. However, such negotiations often neglect to address matters related to underlying issues such as discrimination and improvement of physical and social security, particularly in relation to gender (Bell & O'Rourke, 2007, p.25). This exclusion of women from the negotiation processes comes despite the fact that women represent the largest proportion of sufferers from armed conflict (UNDP Report, 1995, p.45). Civil society initiatives to put an end to conflict, as well as sustain communities during conflict, are also disproportionately comprised of women. It is also women who prevail as head of the household in many such post-conflict societies; as such, women are exceptionally necessary to post-conflict reconstruction and reconciliation, meaning that it is categorically



essential to incorporate women into the development of legal standards and TJ mechanisms (Bell & O'Rourke, 2007, p.25-26).

Criticising Teitel's narrower definition of transitional justice, Nagy (2008) argues that her work is one which focuses on legal mechanisms. Teitel's work is criticised as lacking other very important factors of analysis, such as gender, customary law, culture, and social justice. (Nagy, 2008, pp.276-277). Similarly, Roht-Arriaza (2006) and McEvoy (2007) – amongst others –, argue that the prioritisation of justice issues and, as a result, the financing and implementation of many legal initiatives are emphasised. Often times, the predominant views exclude structural and gender-based violence from the concept of human rights violations. In order for transitional justice to support peacebuilding, accountability and legal justice must also be accompanied by special consideration for psychosocial processes, socioeconomic conditions, and political context. (Lambourne, 2008). De Brouwer (2015) advocates for the importance of taking into account cultural aspects of the region in question and of the survivors. Conducting interviews with survivors and approaching them with the necessary level of respect and care is also a particularly important factor to obtaining successful sexual violence charges within a given indictment. The Committee for the Review of the Investigation and Prosecution of Sexual Violence's Best Practices Manual has also highlighted the fact that "diverse investigative teams, composed of male and female members of different ages and nationalities or regional backgrounds, provide the greatest flexibility in reaching out to and soliciting cooperation from victims and witnesses". (De Brouwer, 2015, p.663-664).

These factors of analysis prove particularly important when dealing with the theme of sexual violence, and even more particularly amongst Bosniak Muslim culture, known to be conservative.

This research is useful in establishing whether or whether not a "one-size-fits-all" approach was initiated in Bosnia and whether a culture-, society- and context- specific approach was followed. Nagy's (2008) research guides us in the direction of analysing the transitional justice initiatives through a gender- and social injustice- based lens. Furthermore, we are motivated to analyse whether in the case of Bosnia and Herzegovina other important aspects may have been neglected due to the prioritisation of legal justice TJ initiatives. Existing literature additionally leads us to explore certain key aspects – did the TJ process overly rely on foreign expertise, models and solutions? Particularly in the case of female Muslim Bosniak

SV survivors, a religious-, cultural-, and gender-specific approach must be demonstrated to have been generated to be able to deem the TJ mechanisms as effective. Concern for psychosocial processes and socioeconomic conditions must also have been demonstrated.

A 2016 report by the UK's Select Committee on Sexual Violence in Conflict highlights two key objectives of TJ: firstly, that perpetrators of conflict-related sexual violence must unquestionably realise that they cannot evade justice; secondly, the need to combine the notion of no impunity with a "comprehensive and survivor-focused approach". Using information based on accounts of conflict-related sexual violence survivors from Yazidi women, a former child soldier from Uganda and numerous written statements and discussions with local groups and NGOs from the Democratic Republic of Congo, one key aspect consistently arose: "the need to respond to victims and survivors of sexual violence in conflict". The consensus showed that the needs of conflict-related sexual violence survivors are multi-dimensional and require not only immediate, but also long-term care. A non-comprehensive list identifies these as including "access to medical health care, psycho-social support, security, economic support, education, and justice". Countless statements collected by human rights organisation REDRESS report the effects of conflict-related sexual violence, stating their impact on survivors' physical and psychological welfare as well as their economic status and their position in society (Select Committee on Sexual Violence in Conflict, 2016, p. 64-65). Previously, certain aspects of the justice sector have been neglected, including victim protection and support. Due to the interdependent nature of rule of law, neglecting just one of these components unavoidably results in the weakening of the others. A comprehensive strategy must be adopted – one which pays special attention to abuses perpetrated against groups disproportionately affected by conflict, such as women. Special measures must be introduced for their protection in judicial processes. Strategies must be holistic, paying integrated attention to the various mechanisms, including individual prosecutions and reparations. (UN Secretary-General Report, p. 9). The importance of a holistic approach to TJ becomes ever so apparent.

Based on the extensive research contained in the compiling of this 2016 report, I will be focusing on two key aspects of TJ: the question of justice and impunity, and the importance of implementing a comprehensive and survivor-focused approach.

## 2.3 Measuring Success

Using the case of Sierra Leone, Clark (2013) seeks to assess the Special Court's contribution to transitional justice. She measures the degree of transitional justice achieved according to each main goal: truth, accountability, reparation, and reconciliation. (Clark, 2013, p.747). These main goals will be used as guidance to assess the degree of transitional justice achieved in Bosnia and Herzegovina, with a particular focus on the social and psychological needs of the survivors. Employing the case of the ICTY, Clark's research begins by investigating the idea that justice must not only be served, but also seen and perceived to have been so; this emphasises the importance of perceptions. Consequently, how women survivors of sexual violence during the Bosnian War perceive the ICTY and its work can be a vital indicator of justice. A second indicator is the extent to which the people are aware of the ICTY's trials – particularly as the ICTY is located outside of the former Yugoslavia. Justice, however, may not necessarily mean just trials; for countless survivors, justice carries a far more personal sense – a sense of what they need in order to progress in their lives. (Clark, 2014, p.53-54). This is especially the case regarding sexual violence survivors, for whom the effects are not only life-lasting, but also frequently affect their family's and community's perceptions of them. The situation in Bosnia and Herzegovina is further complicated by the rampant discrimination against babies born of wartime rape. A survivor-centred approach suggests that punishment must be perceived by survivors to be sufficient for the crime committed and the trauma they continue to endure.

Porter (2017) explores responses to rape in the Acholi sub-region of Northern Uganda. Survivors of both civilian and government soldier rape almost invariably believed the perpetrator should be punished harshly. Common concerns included the health implications of the rape, as well as a fear of possible repetition of the rape. In the Acholi context, the survivors expressed the more personal aspects of the experience as being of greater importance than the social impact of it. (Porter, 2017, p. 265). It becomes clear that an "outsider" may not have an accurate perception of what constitutes survivors' concerns. In a number of interviews with survivors, Stover (2007) found that most survivors renounced the idea of justice as focused exclusively on punishment; rather, they opted for a broader, more holistic definition which includes a wide range of social and economic rights. These include "the right to meaningful and secure jobs; and the right to receive adequate treatment for the psychological trauma". (Stover, 2007, p.120) Therefore, findings of a lack of socioeconomic assistance for survivors of sexual violence in Bosnia and Herzegovina may provide an

explanation for the ineffectiveness of the TJ process. Fundamentally, this shows that while sufficient punishment is indeed a central priority for survivors, the personal repercussions of the event also carry a very great deal of importance. As such, neglecting to foster the personal aspects and socioeconomic consequences of the experience may serve to undermine the importance of retributive justice. In the context of Bosnia and Herzegovina, central to responding to survivors' human rights redress is the implementation of both retributive and restorative justice.

Hoefgen (1999) identifies two ways in which the ICTY has enhanced international law. Firstly, thanks to the ICTY, rape has been prohibited as both a war crime as well as a crime against humanity. Secondly, the ICTY's gender-conscious methodology strengthens and stimulates women's role in the international community and in future international criminal prosecutions. The procedures which protect victims of rape have made enormous advancements by acknowledging the gender-specific harm that rape produces in its female victims. Additionally, the ICTY distinguishes that it is women who usually encounter this unique type of violence. (Hoefgren, 199, p. 179).

McEvoy (2007), however, has underlined the shortcomings of the TJ discourse, claiming its understanding and implementation has been led by a "top-down", legalistic and state-centric approach. (McEvoy, 2007, p. 421-422). Doak (2011) elaborates on this point by stating the issue that there is currently no consensus on what victims can, or should, anticipate from the TJ process. He attributes the neglect of the victim partly to TJ's two primary initiatives: the international trial and the truth commission. In both of these, the victim simply plays an instrumental role – in the case of trials, the focus is the punishment of perpetrators; in truth commissions, the focus is the driving of societal reconciliation. Victims and local communities are not consulted on their needs, nor on their opinions on the goals of the TJ initiatives or what form they should take. Doak argues the notion that there exists an unsubstantiated belief: that the search for truth and justice is capable of satisfying both the needs of individual victims, as well as simultaneously achieving the seemingly more important goals of punishment and societal reconciliation. Individual and societal healing must be recognised as distinct processes, which may progress at varying rates that are determined by different factors. (Doak, 2011, p.264-265). This thesis will seek to evaluate whether the ineffectiveness of TJ process in Bosnia and Herzegovina was associated with being too narrowly defined, prioritising legal aspects and neglecting individual and societal processes of healing and justice.

## 2.4 Theoretical approach

This thesis is largely based on Lambourne's concept of transitional justice which reframes itself as transformative justice and thereby extends its scope to encompass psychosocial processes and socioeconomic conditions. Additionally, as stated in the extended literature review, several indicators of effectiveness/ineffectiveness are used to measure the ineffectiveness of TJ initiatives.

Moving away from the tendency to focus merely on democracy and the rule of law, Lambourne (2013) proposes a model of transitional justice that requires the rethinking of the current focus on "transition" – a provisional process – and instead reshaping it into "transformation", implying long-term and sustainable practices ingrained into society. Lambourne proposes a reconceptualisation of transitional justice as "transformative" justice; in essence, this model of transitional justice spreads beyond the legal dimension and encompasses the political, economic, and psychosocial aspects. In stable societies, these features are essential in assisting the implementation of rule of law. Thus, a transitioning society seeking to build or rebuild itself post-conflict cannot afford to overlook these features.

Lambourne's model of transitional justice is one which views TJ in terms of its contribution to peacebuilding. Viewing it through this lens allows for a holistic perspective which not only considers the expectations of the affected communities, but also deals with the past and builds peace for the future. This model contends that it is absolutely critical to take into account the needs, expectations and experiences of those directly affected by the violence in order to determine which particular TJ path to establish. Lambourne's model of "transformative justice" concerns itself with the justice needs of the local population, essentially employing a number of cultural processes which co-exist with the dominant Western worldview. This model of transformative justice therefore requires not only the traditional transitional legal justice mechanisms, but also "a transformation in social, economic and political structures and relationships". It proposes a syncretic approach to retributive and restorative justice. To achieve this, a democratisation of the TJ process is necessary – one which includes local ownership by including local communities in the design and development of TJ initiatives, as these are only effective if compatible with the local culture. (Lambourne, 2013, p.19-25). Zinsstag & Busck-Nielsen (2017) concur that the particular TJ path should reflect the specific cases, situations and cultures of the state in which they take place. As a result, they should remain heterogenous, as stated by McEvoy &

McGregor (2008) in Zinsstag & Busck-Nielsen (2017). Ultimately, no single template for transitional justice should exist. (Keenan & Zinsstag, 2017). Furthermore, it highlights the inherent inadequacy of any process in addressing the immense psychological and physical pain inflicted by such mass violence.

Lambourne's model argues for the reconciliation of retributive and restorative justice. This model suggests that a more effective approach is a hybrid one which seeks to combine retributive and restorative elements, using creative and locally appropriate mechanisms. This model of TJ is holistic in that it incorporates not only legal justice – which combats the culture of impunity – but also promotes socioeconomic and political justice by setting up structures, institutions and relationships which foster sustainability. This model proposes four key elements of justice: accountability/legal justice; psychosocial justice (including truth and healing); socioeconomic justice; and political justice.

#### 2.4.1 Accountability/legal justice

Lambourne's research in Cambodia, Sierra Leone and East Timor found that accountability and/or legal justice were undeniably viewed as important mechanisms of TJ by interviewees. Survivors in all three countries called for accountability and punishment for perpetrators. Furthermore, many viewed the International Criminal Tribunal for Rwanda (based in Tanzania) as “remote and irrelevant” and punishments for genocide leaders as insufficient. The fact that the ICTY was based in The Hague, the Netherlands may point us to similar views later on. Comments from interviewees also supported the assertion that both retributive and restorative justice should be part of accountability and legal justice.

#### 2.4.2 Truth: knowledge and acknowledgement

Lambourne's model argues that the concept of “truth” is an inadequate concept in grasping the full extent of truth, knowledge and acknowledgement for both survivors and perpetrators. Lambourne draws on the distinction between four different types of truth made by the South African Truth and Reconciliation Commission and outlined by Parmentier (2003) in his model of TJ: forensic or factual truth; personal or narrative truth; social or dialogical truth; and healing or restorative truth. Lambourne additionally describes as “knowledge” the type of truth which establishes “some kind of agreed record of the conflict, the human rights violations that occurred and who was responsible”. Such “truth” may comprise both factual and forensic truth, and narrative or personal truth.

Interviewees voiced dissatisfaction due to not finding out the factual truth of what happened

to their loved ones as the offenders were either not indicted or they were unable to attend the trials which took place far away. The remote location of the ICTR also warranted that survivors had no personal experience of “truth”. The proposed model emphasises the importance to survivors of acknowledgement of wrongdoings as part of the “truth” element of TJ. The obtention and recording of what happened can greatly heighten justice by having perpetrators acknowledge what they have done and its impact on survivors. Additionally, for survivors, narrative truth may be of increased importance as a means to tell their personal version of what was inflicted upon them.

#### 2.4.3 Socioeconomic justice

The proposed model’s use of the term “socioeconomic justice” relates to financial or other material compensation, restitution or reparation, and distributive or socioeconomic justice in the future. Interviewees in Rwanda, Cambodia, East Timor and Sierra Leone all named the inability to meet basic needs as a significant impediment. Interviewees saw the genocide leaders being tried at the ICTR as “living in comfortable Western jails”, whilst at the same time, the Tribunal was perceived not to cater to the material needs of survivors (offering no compensation, health care or other financial assistance). The women’s needs were therefore said not to be met. Another survivor stated that it is impossible to forget when living in such poor conditions. In Rwanda, jealousy and resentment of the other ethnic group’s perceived socioeconomic status was noticeable; in the context of a multi-ethnic nation such as Bosnia and Herzegovina, such ethnic tensions and impressions may also prove to play a role in survivors’ perceptions of justice.

Reframing transitional justice as transformative justice creates a longer-term vision that deals with reparative justice for past harms, as well as distributive or socioeconomic justice for the future. Such a reconceptualisation of TJ helps us to overcome the traditionally narrow, predominantly legalistic, view of TJ, allowing for a broader reach encompassing also psychosocial and socioeconomic justice; both elements are key when dealing with gender based and conflict-related sexual violence issues. This is because addressing gender based and conflict-related sexual violence matters requires not only legal measures, but also measures of instilling structural, societal, and economic changes that would be apt in dealing with the various long-term effects of sexual violence in addition to the intrinsic status of inequality women are faced with.

<i>Truth/Accountability</i>	<i>Psychosocial/economic</i>	<i>Holistic approach</i>
Formal recognition of wrongdoings/no impunity	Victim protection & support	Democratisation of TJ process & local participation
Perceived sufficient punishment	Long-term psychosocial care	Gender & culture sensitive approach
Proper conflict-related sexual violence training of staff, judges, prosecutors etc	Sufficient long-term financial aid	Sexual violence survivor solicitation

**Fig.3: Criteria for effectiveness of transitional justice mechanisms**

### 3. Methodology

The empirical evidence for the case study of Bosnia and Herzegovina will be acquired predominantly by means of secondary sources such as books, scholarly articles including personal interviews with survivors, transcripts of ICTY cases, jurisprudence of the ICTY and courts of Bosnia and Herzegovina. Additional qualitative secondary data collection will be gathered through various reports compiled by numerous NGOs, official UN reports and other official documents including by the Government of Bosnia and Herzegovina, gazette of Bosnia and Herzegovina and online written media news articles by Balkan Investigative Reporting Network (BIRN). Video and written interviews with survivors and experts will also be utilised.

### 4. Findings

#### 4.1 Analysis of legal aspects and accountability

Previously, both the legal standards upon which TJ is based and the processes by which they have been designed have largely gravitated towards an exclusion of women; neither the international tribunal in Nuremberg nor Tokyo mentioned rape. (Naraghi-Anderlini, 2005, p. 103-110). Forward strides were indeed made through the ICTY's inclusion of rape as a crime against humanity in its 1993 statute (Statute of the ICTY, 1993, Article 5(g)), as well as the



inclusion of rape within the definition of a “grave breach” of the Geneva Conventions in its 1997 Prosecutor v. Tadic case (IT-94-1-T, 1997). The severity of these crimes was further solidified through the Rome Statute of the International Criminal Court’s explicit acknowledgment of rape, sexual slavery, enforced prostitution, pregnancy and sterilisation and other forms of sexual violence as crimes against humanity and war crimes. Such inclusions show – at the very least, in the realm of legal standards – a recognition of women’s experiences of sexual violence in armed conflict as one of the most serious and heinous war crimes. With regards to its enforcement, a degree of progress was achieved through an unparalleled representation of women involved in the ICTY as investigators, legal advisors, and researchers as a means to increase the number of women engaged in the investigation of gender-based crimes. (Bedont & Hall-Martinez, 1999). Though still low, over the course of its 24 years, the ICTY boasted a number of positions filled by women (ICTY, 2017).

	Men	Women
Secretary-General appointed ASG Registrars	4	1
Security Council appointed USG Prosecutors	4	2
General Assembly elected ICTY Judges	86	23

**Fig.4: Positions filled by women in the ICTY over the course of 24 years**

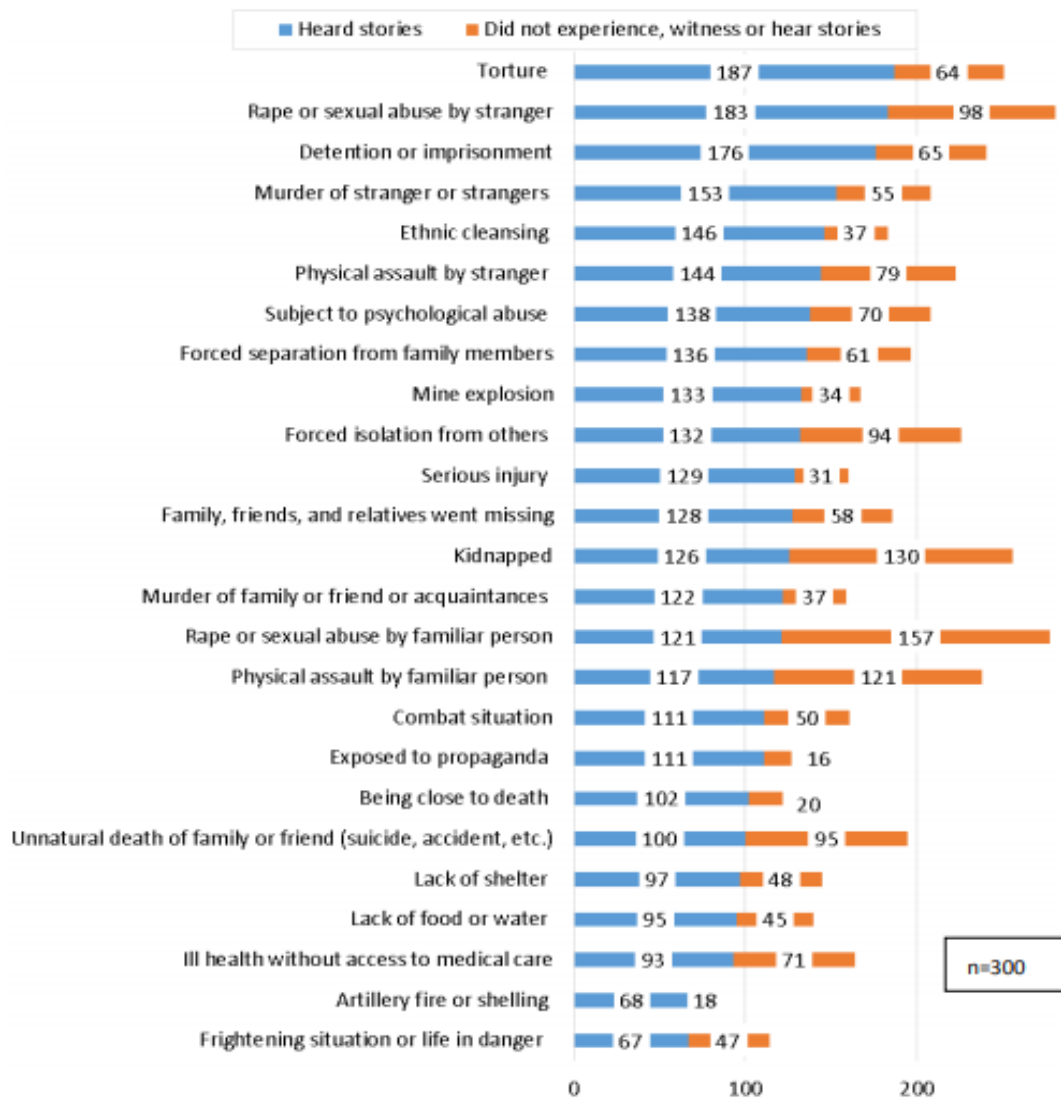
This development in recognition in severity and the enforcement of tenacious investigation into sexual crimes can be seen as a result of the UN General Assembly’s proclaimed goal to aim for gender balance when presenting and nominating candidates. This goal led to the inclusion of women in the international bodies involved in the investigation of war and conflict situations in the ICTY and ICTR, eventually leading to a higher recognition of the gravity of sexual violence and an increased investigation into sexual crimes (Bedont & Hall-Martinez, 1999, p. 75-76).

Results from interviewees of a pilot study carried out by the ICTY found that only one third of respondents believed that the ICTY had done a decent job in punishing offenders. The majority of respondents also declared that the proceedings had moved at far too slow a rate and that sentences where the defendants had entered into guilty plea agreements had not fulfilled the interests of justice. The interviewees were also largely critical of punishments in the guilty plea cases, as one third of respondents believed the sentences were too lenient. (ICTY Pilot Study, 2016, p.121).

Based on various NGOs, Amnesty International (2017) also reports varied levels of cooperation by the authorities. In Republika Srpska, despite the nature of their job which involves being in frequent contact with survivors of conflict-related sexual violence, Republika Srpska Police have not been participating in the training sessions organised by NGOs. (Amnesty International, 2017, p.29).

#### 4.1.1 Formal recognition

In an interview with Wendy Lobwein, head of the Support Unit of the Victims and Witnesses Section of the ICTY (2003), a list of four main motives for testifying was uncovered using anecdotal evidence from witnesses who have testified at the Tribunal: a) to speak for the dead, b) to look for justice in the present, c) to tell the world the truth about what happened and d) contribution that such crimes will not happen again (Wendy Lobwein interview, 2003). A 2016 pilot study into the long-term impact of bearing witness before the ICTY carried out research on the knowledge of wartime experiences by interviewees. However, despite the extremely high prevalence of sexual assault during the war and the attention awarded to these crimes by both the ICTY and the media, “157 interviewees indicated they knew nothing of such crimes committed by someone familiar and 98 interviewees said they knew nothing of such assaults committed by strangers” within a total of 1601 responses to 25 different questions. Such low awareness and consciousness of sexual violence crimes committed against women during the war can only serve to add to the level of injustice perceived by survivors. A lack of formal recognition of damages perpetrated by wartime sexual violence constitutes a serious wrongdoing for victims and survivors of such crimes. (Henry, 2015, pp. 201-214).



**Fig.5: Knowledge of wartime experiences by interviewees (Echoes Full Report, 2016, p.73)**

#### 4.1.2 Low conviction rates

However, despite considerable progress until 2016, the prosecution of wartime rape and sexual violence has dramatically slowed down over the last few years. As of 2018, the Bosnia and Herzegovina Prosecutor’s Office “reached an all-time low in the number of convictions attained in completed cases, with only 17 of 44 defendants in war crimes cases convicted. This equates to a 39% conviction rate. The remaining suspects were acquitted of all charges.” (OSCE, 2019, p.7). This comes despite the fact that the Prosecutor’s Office Bosnia and Herzegovina has obtained the largest financial assistance from the international community – notably, the EU – than any other Prosecutor’s Office in Bosnia and Herzegovina. This is due in large part to systemic – but preventable – failures in the investigation and prosecution

practices of the Prosecutor's Office of Bosnia and Herzegovina. (OSCE report). As of 2016, the Bosnia and Herzegovina Council of Ministers had not yet adopted the revised War Crimes Strategy. The revised War Crimes Strategy intended to tackle the prosecution challenges, improve the distribution of cases among different courts and set new deadlines for their completion. In keeping with the War Crimes Strategy adopted in 2008, all war crimes cases were to be completed by 2023. This objective is unfeasible in view of the present rate of prosecutions. At the current rate, it could take another decade to surmount the existing backlog of cases. With the crimes of wartime sexual violence already dating to 25 years ago, each additional year of deferral means the prospective loss of many suspects, witnesses and survivors and consequently, a heightened chance of impunity for perpetrators. (Amnesty International Report, 2020, p.9).

As of November 2020, Balkan Insight reported that of the thousands of women raped from the beginning of the war to its end, the Serbian War Crimes Prosecutor's Office has only prosecuted "just a dozen or so cases" of sexual violence in conflict. In her 2017 paper, Milica Kostic – then Humanitarian Law Centre's legal programme director – voiced her concern regarding the small number of guilty verdicts in Serbia for wartime sexual violence, stating that as of then, only two final guilty verdicts had been granted for rape as a war crime. (Sabljakovic, 2020).

Sonja Biserko, President of the Helsinki Committee for Human Rights in Serbia, argues that Bosnian courts were not properly prepared to investigate these cases due to a lack of political will. Biserko asserts that in recent years, Bosnian Courts have abandoned this strategy of prosecuting serious crimes as the international experts who were part of the court were abolished due to many of the experts leaving the country. She also contends that the ICTY couldn't handle all cases and as a result passed many of them on to the Bosnian Court; Bosnian Courts failed the quest for no impunity, but society, governments and relevant institutions also failed to address problem of this highly vulnerable group. (Biserko, 2017).

Such a low number of convictions impacts not only victims, but society as a whole. During trials, survivors acting as witnesses are often subjected to repeated, harsh questioning. This type of experience is particularly detrimental to conflict-related sexual violence survivors, placing them at risk of retraumatisation. As a result, many witnesses in the cases finalised in the last few years may feel their brave efforts and subsequent traumatic ordeals were simply

in vain. (OSCE Report, 2017, p.10). This further deters future survivors from coming forward.

It is important to note the heterogeneity and individuality of survivors of sexual violence. Indeed, for some survivors, “retributive justice *is* justice” and participating in war crimes trials may provide some degree of satisfaction (Henry, 2008, p.118). Yet, as of 2017, a report by the OSCE indicates that the Prosecutor’s Office in Bosnia and Herzegovina has not yet established a policy for the prioritisation, investigation and prosecution of conflict-related sexual violence, nor secured a dedicated accommodation to this effort. Furthermore, the report establishes that whilst the OSCE regularly holds mission trainings on wartime sexual violence, neither the Prosecutor’s Office Bosnia and Herzegovina nor the Court of Bosnia and Herzegovina have shown systematic initiatives or efforts in identifying specified training requirements. This does not ensure an appropriate training of judges, prosecutors, investigators, and support staff on best practices when dealing with conflict-related sexual violence investigation, prosecution and adjudication. (OSCE report, 2017, p.91).

Survivors had to testify in a distant setting in the Hague, before the eyes of international media, often before several of their aggressors. (Niarchos C, search for Trauma to quote). Emir Suljagic, former Minister of Defence of Bosnia and Herzegovina and worked as correspondent for the ICTY, claims that the situation was badly handled by the ICTY and by judiciary in Bosnia and Herzegovina. Speaking from the perspective of judiciary, he states that the judiciary has completely failed to address these crimes. “Our prosecution was completely failed”. Some of the women had to be smuggled out from their families to testify in The Hague due to social stigma. Suljagic adds that the problem is that the issue of prosecuting Crimes Against Humanity and war crimes in Bosnia and Herzegovina was to be done on a schedule. Following the 9/11 attacks, Suljagic describes that the international community lost interest in the Balkans and the local political class was only too happy to oblige. Justice, and particularly transitional justice, should not be carried out on a budget or time schedule. This negates the transformative view of transitional justice and fails to view TJ as a continuum. (Suljagic, 2017).

When asked about the less than 1% of total survivors of sexual violence war crimes having come to court, Toby Cadman – international law specialist in the field of war crimes – claims that there was a failure by design. The Bosnian War Crimes Chamber failed to address the question of sexual violence by only dealing with a handful of cases, as they did not have a

proper strategy to deal with it, did not have trained personnel to deal with these types of cases and no thought out strategy on what to do *after* the handful of persecutions. According to Cadman, the key issue was that there was no real strategy on a prosecution level, certainly in the institution he worked in. Additionally, he claims that the international community made a “huge mistake” when they first set out the War Crimes Chamber due to its message being “every case will be dealt with” – an endeavour which is just not possible, as justice is bound by the resources available and the international community left far too early. Cadman subscribes to the idea that there should have been a long-term commitment but unfortunately, the TJ measures and strategies implemented in the case of Bosnia and Herzegovina were not developed accordingly. Planned units operated around in Foča and Višegrad committing strategies of mass rapes, yet resources provided to the cantonal and district Prosecutor’s Office in court. Failure by IC and national govt. (Cadman, 2017).

Semka Agić, a survivor speaking with TRIAL International, recounts the lengthy and inadequate process she had to suffer through after approaching an NGO providing legal aid. *“(…) I had to give a statement, then I had to get witnesses’ statements, notarise them, get copies of our identity papers, and then they gave my long statement and witnesses’ statements to the Prosecutor’s Office where it just sat there for years. There were always other priorities.”* As she only knew the man who raped her by his nickname, the authorities investigating the case could not find him. Semka Agić resorted to carrying out her own investigation by asking around, eventually obtaining his first name, last name and address. *“Now he is a convicted war criminal. I transferred my burden to him”*, she says. Despite the legal aid provided by the NGO, the courts’ lack of prioritisation and proper management of cases led to Agić’s case being part of the immense backlog of cases. Were it not for her own endeavours in pursuing justice and prosecuting the man who raped her, Agić’s case would have continued to be part of the cases pending for unacceptable periods of time.

Bosnia and Herzegovina’s failure to adopt the revised War Crimes Strategy which would have sought to remedy the shortcomings of the now expired 2008 War Crimes Strategy demonstrates a serious failure in achieving appropriate conviction rates and, thereby, a failure in establishing a formal recognition of wrongdoings. The failure to adopt the revised War Crimes Strategy indicates the local governments’ unwillingness to view TJ as a long-term commitment.

### 4.1.3 Retraumatization

A devastating sense of shame and self-blame are already commonly present in virtually all survivors of sexual assault. (Women in the Law Project, 1994). Correspondingly, a number of protective measures for evidence in cases of sexual assault were put in place with hopes of encouraging survivors to come forward and testify. At a glance, such measures could be perceived to be reassuring and to set the tone for the dynamic of the testimonial process. Particularly, survivors who have never previously testified in court may feel a sense of safety in the belief that these measures will allow for their protection. As a result, survivors may have been deeply unprepared for the suggestions made by the defence.

In cases of sexual assault	
(i)	<b>No corroboration of the victim's testimony shall be required</b>
(ii)	<b>Consent shall not be allowed as a defence if the victim</b> <b>(a) has been subjected to or threatened with or has had reason to fear violence, duress, detention or psychological oppression, or</b> <b>(b) reasonably believed that if she did not submit, another might be so subjected, threatened or put in fear;</b>
(iii)	<b>Prior sexual conduct of the victim shall not be admitted in evidence.</b>

**Fig.6: Rule 96 of the ICTY's Rules of Procedure and Evidence**

Such measures are, however, inherently flawed due to their reliance on judges' capabilities to protect witnesses from ungracious and deplorable assertions regarding survivors' responsibility and/or complicity in rape. Victims had to testify in front of panels composed of male factfinders. At the trial level, judges sat in panels of 3. Only 2 of the 11 judges were female as of 1995. (Niarchos, 1995). I argue that the gender-specific sensitivities of sexual assault, and specifically wartime sexual assault, cannot be fully grasped by male judges. Madeleine Rees, chief of mission in Bosnia for the Office of the High Commissioner for Human Rights, communicates disturbing accounts. *"I've heard appalling reports about comments made by some of the judges, (...) One international judge asked a woman if she was a virgin at the time of the alleged rape, and what she looked like when she was 16."* (IWPR, 2007).

And indeed, Rule 96 has proven to be routinely and successfully circumvented – even during the ICTY’s landmark Foča trial, the second ICTY trial to deal entirely with charges of sexual violence. Despite Rule 96 of the ICTY’s Rules of Procedure and Evidence, the defence was able to piercingly imply that consent had been given by the witness.

*Q. Will you agree with me that jealousy is a psychological state, when a person imbued by is ready to do certain things which people which are not imbued by jealousy would not consider doing?*

*A. I'm afraid I don't understand that question at all. What are you talking about? What do you mean by jealousy?*

*Q. I'm referring to the fact that you said that after four or five days, Klanfa rejected you. I said yesterday that in my understanding, when a man rejects a woman, it is usually a person he loves and not a person who has been raped.*

Additionally, in Mucić, the defence was once again able to bypass Rule 96 by questioning the victim on her past sexual history, regarding a previous abortion and possession of contraceptive pills.

*Q: Well, at the end of March in 1992 you had gotten pregnant, had you not?*  
[...]

*Q: Ma'am, would you like me to repeat the question? Do you need me to repeat it? Ma'am, would it surprise you if your doctor said that you came to him around the end of April --excuse me-- the beginning of April or late March in 1992 and that at that time he did not prescribe any contraceptive pills for you, and, in fact, he told you that because of your age he would recommend a different type of contraceptive?*

Anytime a witness tells her story, she is forced to relive the trauma of the experiences (Hoefgen, 1999, p.163). Not only does the very process of testifying at the tribunal equate to retraumatisation for survivors of sexual violence, but such offensive allegations and sensitive suggestions of prior sexual history further amplify the sense of shame already felt by survivors. Furthermore, it fails to protect witnesses’ right to privacy by publicly divulging some of the individuals' most intimate personal history. Such attacks on witnesses severely damage the prospective potentials for the therapeutic impact of testifying, story-telling and retributive justice for survivors of conflict-related sexual violence. For survivors of sexual violence, the risk of secondary victimisation is particularly acute. (Doak, 2011, p.286).



During the trial of Boban Simsic – a Bosnian Serb police officer and prison guard convicted of rape of Bosniak civilians –, human rights activist and sexual violence survivor Bakira Hasečić recounts, "*six or seven women that testified in this case were named in court. The judges said their testimonies were not convincing enough*". This is further evidence of the ICTY's failure to dutifully ensure the protection and privacy of its witnesses.

Witnesses who testify about their own experiences of abuse and violence, such as sexual assault, reported to VWS (Tribunal's Victim and Witness Section) feeling deeply outraged and hurt during cross-examination when they felt their credibility was questioned.

Furthermore, witnesses can become severely distressed when questioned in detail regarding specifics they might have preferred to and spent time on forgetting and dealing with (Echoes Full Report, 2016, p.102). One witness suffered from memory problems due to her trauma. Another witness, N60, raped repeatedly at just 14 years of age by five different soldiers, had the opportunity to testify as a witness for R49 more than 20 years later. She stated her fear of having forgotten many details of what occurred. N60 stated her absolute certainty that one of the defendants had raped R49. Upon cross-examination, the defendant's lawyer repeatedly questioned why she had failed to mention his client during her previous statements given to police and prosecutors. N60 could not explain this, but asserted that she had previously named the defendant in a 1992 statement; a statement which the defence counsel did not have a copy of. The defence lawyer did not hesitate to ask her how she could have neglected to mention his client in two of her statements. (Clark, 2016, chap.5). The process of testifying can provoke complicated memory issues for survivors, as it necessitates the re-activation of memory. Survivors are forced to speak about, and remember, deeply traumatic events that they may have tried to forget. As Clark notes, this problem may be amplified in the Bosnia and Herzegovina context due to the fact that many survivors are testifying many years after the rape/s took place. Unrestrained harsh and stringent questioning by the defence greatly increases the risk of re-traumatisation.

#### 4.2 Psychological, social, reparations

As one of TJ's core goals to redress and acknowledge human rights abuses, it is essential to consider the severity and breadth of consequences endured by survivors of sexual violence, as well as their families and communities at large. The scope of these consequences is both long-lasting and multifaceted. In order to develop correspondingly just and effective TJ mechanisms, one must consider both the particular longevity and severity of the effects of

rape and sexual violence. Research has revealed the particularly traumatic imprints left behind by rape and sexual violence, whose long-term effects are multi-dimensional: physical, psychological, sexual, socioeconomic, and familial (Burgess, 1983, p. 97-103). In addition to the survivor's social, emotional, and physical effects – ranging from infertility to PTSD, complete lack of trust, constant sense of fear, the list of which is far too extensive to be done justice in this paper –, relatives of the survivor and the community must also deal with the legacy and stigma left behind by the incident (Overseas Development Institute, 2014, p. 2-3). Women having been subjected to conflict related sexual violence described a greater severity in their PTSD symptoms in comparison to the survivors of non-sexual conflict trauma. (Kuwert et al., 2014). As a result, women having experienced conflict-related sexual violence require increased amounts of medical and psychological care.

In the context of TJ, the process of storytelling is usually investigated in the context of TRCs and criminal trials rather than intra-survivor forms of storytelling. However, by sharing their experiences with each other, survivors have been found to regain a sense of meaning. This highlights the importance of the creation and access to support networks as a means to address the long-term consequences of sexual violence. (Clark, 2018, p.?) Unfortunately, the deep trauma left behind by conflict-related sexual violence has not been handled appropriately by the state, with most such services being provided by a variety of NGOs (Biserko, 2017). However, this variety of NGOs' lack of concordance means it is rather difficult for conflict-related sexual violence survivors to make coordinated demands. Over the last two decades, the public sector has failed to successfully provide psychosocial counselling to conflict-related sexual violence survivors. "Less than 6% of survivors exercise this right within public institutions, regardless of the magnitude of their suffering, trauma revival, PTSD, revived stress through acting as a witness and numerous revisions of their status." (UN Women & UNFPA, 2017). In the Federation and Republika Srpska, many centres have claimed to possess the necessary capacities, specialised practices, and trained staff to gain survivors' trust and provide assurance in their services. Centres tend to respond that they possess the ability to cater to any category of citizens, yet failed to report any evidence of conflict-related sexual violence survivors actually making use of their services or acknowledging any specificities in their methods of working with conflict-related sexual violence survivors. Regrettably, Banja Luka and Višegrad centres did not even have any legislative obligation to work with conflict-related sexual violence survivors. (The same, p.59).

Public institutions have therefore failed to provide adequately extensive and specialised psychosocial counselling to conflict-related sexual violence survivors, leaving most of this burden to Civil Society Organisations. CSOs working with conflict-related sexual violence survivors have emphasised the importance of trauma healing; as a result, they organise psychological counselling and play an enormous role in supplementing the public support. Unfortunately, due to CSOs' limited financial resources and capacities for advocacy, they cannot represent a sustainable support system for the future. Psychosocial counselling must be a bespoke service employing a highly specialised, expert approach, combined with frequent interaction and individual interactions with conflict-related sexual violence survivors. As such, "the State has failed to address the issue of conflict-related sexual violence, develop adequate policies, integrate CSOs into policy design and implementation, assess survivors' needs and develop human and other capacities to respond to these needs" (UN Women & UNFPA, 2017, p.60). Shockingly, it wasn't until 2003 that the Women Victims of War association was created in FBosnia and Herzegovina, and no such associations of victims of sexual violence existed in RS until 2012, after the issue of sexual violence had surfaced in the Federation in 2006 (Hronesova, 2016, p. 349).

Other issues facing these women include social integration, high unemployment, and poverty. Unlike in Republika Srpska, Bosnian Law recognises conflict-related sexual violence survivors as civilian victims of war. Whilst they benefit from some rights, these are unfortunately not adequately implemented. Civilian victims of war may only benefit from payments after medical assessments of their physical harm place them in the <60% range. conflict-related sexual violence survivors, however, are considered 100% invalid and need not go through such medical assessments, instead going through a special civil sector committee hearing about their case (Hronesova, 2016, p. 347). Compensation, access to justice and reparations have however been limited to very few. The number of monthly personal allowance beneficiaries in the Federation numbered only 805 at the end of 2014 (Government of Bosnia, 2017). According to the Law on Social Protection, Protection of Civilian Victims of war and protection of families with children ("Official Gazette of Bosnia and Herzegovina", number: 36/99, 54/04, 39/06 and 14/09), this can be collected by civilian victims of war and victims of sexual abuse and rape. It is, however, important to note that this is absolutely nowhere near the real number of survivors of sexual violence. Many survivors are still not ready to apply for the exercise of their rights or other assistance, due to the potential prospect of stigmatisation in a still largely conservative environment. Besides, a

large number of survivors have fled Bosnia and Herzegovina, and survivors may not exercise these rights when leaving Bosnia and Herzegovina for a period longer than three months.

(39/06)

It is also important to note that this law only came into force as of 2006 – 11 years after the end of the conflict. These individuals receive monthly allowances of 250€ in the Federation of Bosnia and Herzegovina and 150€ in Republika Srpska (Biserko, 2017). Furthermore, media, education and the public sphere have failed to carry out sufficient campaigning in order to succeed in society's recognition of conflict-related sexual violence survivors as victims of war and, as a result, something which may happen again. (The same, 2017). Two decades later, TJ's aim of prevention therefore remains uncertain.

Aida Skenderagić, who works for IOM Bosnia and Herzegovina on the Joint UN Programme Providing Care, Support and Justice for Survivors of Conflict Related Sexual Violence in Bosnia and Herzegovina also states that “political dynamics and budget restrictions have led to fragmented and limited legal solutions” (2017). She tells the story of a woman and her son, who were raped in front of each other in a detention camp. Having married and started his own family – seemingly living a quiet life for a number of years –, he eventually committed suicide, 15 years after the incident. His story was told by his mother at a meeting for survivors, organised by the IOM. Astonishingly, the mother reported feeling content; *“not because she was informed of the rights she is entitled to as a survivor, but because she was served lunch which she did not have to prepare by herself and because she took a pen and a notebook from the meeting room to give to her student granddaughter”*. 20 years later, such accounts only serve to highlight the sheer self-reliance and absence of support survivors of sexual assault have been left with (Skenderagić, 2017).

As reported by Balkan Insight, as of June 2019, Bosnia and Herzegovina had so far still neglected to adopt a state-level law on the Protection of Victims of Torture which would offer financial aid, assist with rehabilitation and multiple other benefits. Both Republika Srpska and the Federation of Bosnia have their own laws which, while sharing similarities, contain substantial shortcomings. Murat Tahirović, president of the Victims and Witnesses of Genocide association, informed Balkan Insight that any law on the entity level – whether in Republika Srpska or the Federation of Bosnia – always excludes some survivors, as it only covers those who currently reside in either of those entities and does not take into account those survivors who fled as a result of the war and did not come back. Painstakingly, before

2015, survivors did not benefit from any damage benefits by the Bosnian state court and even as of June 2019, there had only been 13 such judgements. (Vladisavljevic et. al, 2019). According to NGO TRIAL International as stated in Vladisavljevic et al., the amounts awarded ranged from 5,000 to 30,000€. TRIAL International further reports that a large number of survivors seeking compensation have been advised to instigate civil proceedings by themselves. This once again represents a clear lack of a survivor-centred approach, as civil suits – unlike criminal proceedings – do not allow for the anonymity of the survivor, places them at risk of retraumatisation by the court process and survivors are also expected to bear the lawyer costs themselves. This constitutes an inadequate measure of protection for witnesses and also fails to consider the financial situation of survivors. Acting as evidence of TJ's interrelatedness and relationship-drive, this lack of psychological and financial aid discourages survivors and witnesses from coming forward, thereby destabilising and hindering the legal justice aspect of TJ. The lack of a holistic, integrated approach in the Bosnian context demonstrates that the weakness of one measure (in this case, lack of financial support and appropriate victim protection) may indeed impair the effectiveness of others.

Survivors may benefit from monthly pensions similar to those suffering from disabilities; however, Republika Srpska rejects all claims filed after 2007 and the legislation in the entity involves claimants proving they incurred physical injuries. Such time constraints neglect to provide a long-term, transformative approach to transitional justice and additionally only serve to preserve a greatly reductive view of the psychological, social and financial effects sustained by sexual violence. Survivors may not necessarily have incurred physical injuries from their experience, but all will most certainly carry the psychological repercussions. Legislation regarding monthly pensions in Republika Srpska therefore fails to provide appropriate financial reparations to survivors of sexual violence. Such failings in legislation not only fail to provide survivors with the financial support they deserve, but also fail to provide them with the much-needed official recognition of their suffering. In addition, inadequate financial support may also hamper survivors' access to psychosocial care. As noted by Clark (2013), this fails to recognise the interrelated nature of such complementary relationships, neglecting the relationship-driven nature of TJ goals and mechanisms. Once more, the weakness of one mechanism (in this case, appropriate monthly pensions) only serves to undermine other mechanisms, such as the achievement of formal recognition of damages attained by judicial measures or access to psychological care. Jasna Zečević,

president of Viva Žene Tuzla organisation – an NGO focusing on psychosocial assistance and support to victims of war – told Balkan Insight: “The state must be take over responsibility for those who survived wartime violence, to show them it recognises their sufferings, but we are seeing that is not happening”. (Vladislavljevic et. al, 2019).

Bosnia’s Law on the Protection of Victims of Torture, intended to grant financial support, rehabilitation and a number of other benefits, was first drafted only in 2006, 11 years after the end of the conflict. A second draft followed in 2011 and a third in 2017. Though Bosnia and Herzegovina has signed both the UN Convention against Torture (CAT) and Other Cruel, Inhuman or Degrading Treatment or Punishment and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and is therefore obligated to enact the law, this was still not the case as of 2019. Bakira Hasečić confirms efforts in trying to pass a law on raped and sexually abused women at the state level in 2005, but blames lack of political will to support the law from Republika Srpska. (Bajtarevic, 2019).

As reported by Sabljakovic in November 2020, during trials, the Serbian courts had not yet granted any compensation to conflict-related sexual violence survivors. One survivor of rape has even gone as far as to renounce her right to reparations due to a fear of losing her anonymity if she were to file a civil suit.

Under a concealed identity, witness SV1 testified from a separate room as a protected witness in September 2016, following her wish not to have to see the defendant face-to-face. VS1 was raped multiple times in 1992. Expert witness Dr. Branko Mandic found that the witness suffered from a chronic form of post-traumatic stress disorder as well as anxiety and depression. Additionally, she stated that she began to suffer from diabetes and hypertension during the war. Describing her emotional state the day following the rape, she told the court: *“I begged for someone to kill me so as not to live with this misfortune anymore – I can’t see, I can’t live anymore because of the shame.”* The judge inquired as to how much compensation she was seeking for the trauma and damages she had suffered; *“well, your honour, I am looking for whatever is normal, if there is such a thing; my life has been ruined, and you know how much that is worth”*, she stated.

She was awarded nothing. Instead, she was told to file a civil suit for damages. The Serbian Civil Procedure Law does not allow one to claim compensation under a pseudonym.

A civil suit for damages, therefore, would entail not only forcing VS1 to go through the insufferable trauma of testifying in a new court case once more, but would also mean

relinquishing her anonymity. Despite the importance of following a survivor-based approach which would guarantee the protection and anonymity of witnesses, the Serbian Civil Procedure Law was not amended in a way as to appropriately deal with sensitive procedures concerning conflict-related sexual violence.

As a result of the interdependence of the various TJ mechanisms, survivors have missed out on potential reparations, or alternatively, have had to give up one measure for another. As established earlier by De Greiff (2012) and Clark (2013), TJ mechanisms are most efficient when working in conjunction with each other. It is evidenced here that the lack of a comprehensive, integrated approach to TJ eventually leads to severe injustice and lack of support for survivors of sexual violence. Survivors should not be forced to choose between their right to anonymity and privacy regarding such a deeply personal and traumatic event, and their inherent human right to compensation after undergoing such persistent traumas. (Sabljakovic, 2020).

The UN Convention Against Torture additionally states that each State party should fulfil its obligation in adopting a long-term, integrated approach to rehabilitation. These should include “a wide range of interdisciplinary measures, such as medical, physical and psychological rehabilitative services; re-integrative and social services; community and family-oriented assistance and services; vocational training; education etc” (UN Committee Against Torture, 2012). These measures are intended to act holistically, as a means of restoring to the best extent possible, the survivors’ independence and inclusion in society, as well as the redress of their physical, mental, social, and vocational powers. Unfortunately, at the entity and cantonal levels, the authorities in Bosnia and Herzegovina have largely continued to neglect their obligation to provide appropriate rehabilitation services for survivors. The bulk of this work has therefore been relected to internationally funded programmes and various, deeply devoted NGOs. On the whole, the provision of adequate rehabilitation (including medical care and psychosocial support) “falls short of the ‘minimum core obligations to ensure highest attainable standard’ prescribed by the International Covenant on Economic, Social and Cultural Rights (CESCR) and World Health Organisation (WHO)” (Amnesty International, 2017, p.42-43).

Bosnia and Herzegovina is alarmingly ranked considerably lower than the European average, with only 190 doctors per 100,000 persons. (The same, p.43). As a result, survivors of wartime sexual violence – for whom the trauma leaves them with increased medical needs –

face even greater obstacles in their access to adequate medical care. With regards to mental health support, Bosnia and Herzegovina possesses on average a measly one (1) Centre for Mental Health for every 30,000 – 50,000 persons. This leaves smaller municipalities in the country with no access to psychosocial support. Mima Dahić of Vive Žene reports that even towns with significant numbers of sexual violence survivors (such as Srebrenica and Bratunac, with populations of about 15,000) have access to limited staff. *“In Srebrenica, the local clinic employs only one psychiatrist and one psychologist who work 50% and 30% of the time, respectively. This is far from adequate to meet the needs of survivors who require consistent support”*. This incompetent institutional support once again leaves the brunt of the work to NGOs. Due to limited resources, however, NGOs are unable to cover all the necessary regions and survivors which may be in need of medical and psychological assistance. (The same, p.44). The lack of a comprehensive, public, state-backed healthcare policy for conflict-related sexual violence survivors and current reliance on NGOs means that TJ initiatives have been ineffective as they failed to foster self-sustainable solutions. As a result, a significant proportion of survivors are forced to do without any specialised medical and psychosocial care.

Many survivors have also shared shocking accounts of degrading experiences at the hands of healthcare and psychosocial service providers. In Brčko District, Husnija recounts having been kept waiting from 8:00am to 3:00pm to simply see a doctor. She further recounts regular unpleasant encounters with staff when seeking to obtain medical care. Amnesty International research has found that Husnija’s experience is unfortunately not unique, and the extreme variability in degree of care is in fact shared by all survivors. The level of professionalism displayed by staff is largely arbitrary and uneven depending on location. (Amnesty International, 2017, p.46). A lack of systematic training and proper sensitisation of staff in working with survivors of sexual violence, deepened by the existing prevalent social stigma surrounding survivors has been evident. Such failures in establishing a conflict-related sexual violence-sensitive approach by adequately training staff may serve as one of many deterrents for survivors to seek psychosocial support. This lack of appropriate training further demonstrates the clear lack of a long-term, transformative view of TJ, as well as highlighting the fact that survivors have currently still not been placed at the forefront of measures.

Amnesty International emphasises the clear lethargy and inaction on behalf of the authorities in Bosnia and Herzegovina. As a result, in 2014, UN agencies launched “Seeking Care, Support and Justice for Survivors of Conflict-related sexual violence in Bosnia and



Herzegovina”, a joint effort by the International Organisation for Migration (IOM), the UNDP, the UNFPA and the UN Women, which works to promote systemic and longstanding solutions aimed at advancing and regulating support for survivors. The programme is targeted at service providers in the healthcare, economic and judicial sectors and also seeks to widen its reach into rural areas. A separate programme funded by the EU, the association of NGOs – including Vive Žene and Medica Zenica in the Federation and ACED and United Women in Republika Srpska – seeks to support survivors in their communities. These NGOs contribute regular psychological care to survivors, including measures such as individual and group therapies. Where possible, the NGOs also assist survivors’ access to publicly provided services. Staff training in institutions of public health and social services is also provided. (Amnesty International, 2017, p.46). Women having been subjected to conflict-related sexual violence described a greater severity in their PTSD symptoms in comparison to the survivors of non-sexual conflict trauma. (Kuwert et al., 2014). In the context of TJ, the process of storytelling is usually investigated in the context of TRCs and criminal trials rather than intra-survivor forms of storytelling. However, by sharing their experiences with each other, survivors have been found to regain a sense of meaning. This highlights the importance of the creation and access to support networks as a means to address the long-term consequences of sexual violence. (Clark, 2018). Cadman (2017) contends that many survivors have effectively been left behind, with only handful of NGOs doing the support. (Cadman, 2017). Such measures, however, cannot be said to constitute effective TJ mechanisms as they are not sustainable. NGOs, various international organisations, and the international community alone cannot continue to bear the weight of providing appropriate staff sensitisation, training and psychosocial support for survivors of sexual violence. The authorities in Bosnia and Herzegovina have refused to act appropriately by implementing appropriate institutional and systematic change strategies and allocating sufficient resources in providing staff with suitable training in working with survivors of sexual violence at the entity-level.

Moreover, the fragmented system in Bosnia and Herzegovina poses increased challenges. This is the case for women living in Republika Srpska and Brčko District who are however registered as civilian victims of war in the Federation of Bosnia. Some survivors are forced to choose between various measures, such as having to forgo access to medical care where they reside in Republika Srpska so that they may continue to obtain much needed monthly allowance as a recognised civilian victim of war in the Federation. (Amnesty International, 2017, p.44). In many cases, the monthly allowance is a family’s sole source of income and

the survivor therefore relies on it as a means to sustain her family. As a result, survivors are forced to make a choice one should never have to make: having access to specialised care that they so deeply need in order to live a normal life, or continuing to have access to income that will help them keep their families afloat. This lack of coordination illustrates the state's refusal and neglect to devise inclusive and long-term measures designed to assist conflict-related sexual violence survivors.

It becomes evident that a comprehensive and survivor-based approach was not followed. Varying measures are being substituted for one another, with survivors having to choose between justice or anonymity, or monthly allowances in place of medical care.

### 4.3 Holistic approach

Following the Dayton Peace Accords, Bosnia and Herzegovina saw a decade of international peacebuilding backing, including judicial reforms. In these processes, however, women were largely absent from political decision making (Björkdahl, 2012). Analysing the DPA from a gender perspective, the Swedish NGO Kvinna till Kvinna deduces that gender and women's rights were not apparent in the DPA. As mentioned in Björkdahl, "the DPA did 'not diminish but reaffirmed the patriarchal nationalism as a dominant ideology and social system in postwar Bosnia' and formed a peace that is far from being gender-minded".

The signing of the Dayton Peace Accords officially brought the war to an end in 1995. Peace negotiations offered an opportunity for democracy and peace to be reimagined in gender-sensitive manners. Yet women's particular interests and needs are not taken into consideration in the Dayton Peace Accords and did not communicate women's experiences or their expectations of the postwar peace. Kvinna Till Kvinna found that gender and civil society were not a focal point in the Dayton Peace Accord, and describes the enactment of the accords relative to "the concerns of women and women's rights in civil society" as weak. The NGO reports that civil society, including women's groups, scarcely had any official network of influence on the peace process. Peace negotiators were largely represented by male ambassadors of the fighting parties, concentrating on negotiating an end to war. It was not until 1999 – more than three years after the end of the war – that the Bosnia and Herzegovina Gender Coordination Group (GCG) was founded. However, none of the offices even proposed any gender-based action strategies during their Bosnia and Herzegovina missions' inception. Since then, a number of them have developed gender programmes, but still are devoid of any formulated strategies, with the exception of a meagre one or two. The report

also highlights the current lack of self-sustainability of any gender-awareness progress due to its basis in ad hoc arrangements and personal contracts, rather than structural or systematic integration of a gender perspective in the decision-making bodies. The lack of a gender-inclusive perspective led by local women and civil society constitutes a severe setback in the creation and implementation of sustainable, effective TJ measures. By excluding women and women's perspectives (particularly local women), all the subsequent TJ measures have failed to adequately consider the gender-targeted approach of the mass sexual violence strategy executed during the Bosnian war. Additionally, NGOs active during wartime have been mostly absent and excluded from the peace process. Agencies have generally highlighted the necessity of cooperating with local NGOs, but examples of this cooperation are very scarcely found. (Kvinna Till Kvinna report, 2000, p.49). An alarmingly small focus has been placed on the value and potential of civil society organisations, such as women's NGOs, and their potential contribution to systematic structural capability.

The exclusion of women and their knowledge of civil society lays the gender-gapped foundations which will then erroneously construct all of the subsequent TJ measures. The lack of local and civil society participation in the peace process may provide an explanation for the ineffectiveness of the measures implemented to deal with conflict-related sexual violence in post-Dayton Bosnia and Herzegovina.

Kvinna Till Kvinna reports that there is also an unmistakable absence of gender consciousness among senior staff within the international community. *“Basically, the Dayton peace negotiations were a dialogue of men, often with purely militaristic overtones. No women were present around the negotiation table, and there was only one woman represented among the signatories. There were a few women among the international delegates but none in the regional delegations”*. (The same, p.20). The Constitution of Bosnia and Herzegovina's state institutions (as stipulated in articles IV (Parliament), V (Presidency), VI (Constitutional Court), and Article IX (General Provisions) of Annex 4) failed to explicitly state any positive measures for the involvement of women at these highest levels. The Constitutional Court also neglected to specify the need to advocate for the nomination of women judges to offset the negative gender balance. And yet, despite an increase in the proportion of women in elected office as compared to 1996, Kvinna till Kvinna reports that as of 2000, women represented a mere 26% in the House of Representatives of the Parliament (15% in the House of Representatives of the Federation and 23% in the National Assembly of

Republika Srpska), 18% in the legislative authorities in the Federation, and 23% in the ten newly created communes. (The same, p.22)

	House of Representatives of the Parliament	Legislative authorities in the Federation	Newly created communes
% of women	15 % House of Representatives of the Federation	18%	23%
	23% National Assembly of Republika Srpska		

**Fig.7: Women’s constitutional and legislative representation in Bosnia and Herzegovina, as of 2000**

The Swedish NGO’s report also documented that The Council of Ministers does not include any women. A scant four women out of 67 appointees were appointed to different functions. Additionally, the Government of the Federation does not so much as have a single woman minister. Although communal court judges are predominantly women, the Supreme Court has only 1/3 women and the Constitutional Court has only one woman. The evident lack of women’s inclusion in constitutional and legislative bodies demonstrates the government’s clear dismissal of the Beijing Platform for Action’s requirement to take measures in assuring women’s “equal access to, and full participation in, power structures and decision-making”. (The same, p.22). Moreover, the OSCE also reports a lack of gender balance in the police units providing support in war crimes investigations. The OSCE was not aware of any policies ensuring that law enforcement agencies give particular consideration to the gender balance in police units, nor the provision of dedicated expertise to deal with gender-based crimes such as conflict-related sexual violence.

The lack of gender-inclusive strategies and women’s representation at the highest levels of decision-making bodies and legislative levels cannot be said to be part of a holistic approach to TJ. The gender-targeted nature of the conflict-related sexual violence which took place in

Bosnia and Herzegovina would particularly have benefited from a gender-balanced approach, in addition to culturally and locally appropriate measures and participation.

## 5. Conclusions & recommendations

Over the course of this thesis, several aspects have become apparent. Indeed, effective transitional justice mechanisms are relationship-driven and consist of interrelated measures. Adequate training of staff would avoid retraumatisation during trials; adequate victim protection measures would enhance the quantities of survivors coming forward; a long-term & victim-centred approach would lead to better allocation of resources, adoption of strategies and policies, which in turn would lead to an effective culture of no impunity, formal recognition of wrongdoings and justice; increased, centralised and coordinated financial reparations mechanisms would ease access to psychosocial rehabilitation, and local participation and survivor solicitation may help to better design sustainable approaches to transitional justice and peacebuilding.

It cannot be denied that the transitional justice measures implemented to deal with conflict-related sexual violence in Bosnia have been largely ineffective. State actors have been passive at best in their efforts to pursue long-lasting and comprehensive justice for survivors of conflict-related sexual violence. It is the state's and entity governments' responsibilities to provide their citizens with long-lasting and appropriate psychological rehabilitation, medical care and financial reparations. Yet 25 years later, the vast majority of the labour has been left to the international community and dedicated NGOs.

It is disgracefully clear that Bosnia and Herzegovina is the victim of a lack of political will and engagement by its state for the wellbeing of its women citizens and survivors of sexual violence. Survivors have remained an afterthought in the design of TJ mechanisms. It is imperative that Bosnia and Herzegovina recognises that women are an integral part of every society and gives them the same opportunities and prospects as they do their male counterparts. This begins with consistent indications of women's role and significance in civilisation at all levels of society. The social stigma of rape and sexual violence must be removed, the responsibility and shame shifted away from the woman's core and solely onto the perpetrator, and survivors: celebrated.

Though this research has focused on women survivors of sexual violence during the Bosnian War, it is important to highlight that men have also been subjected to wartime sexual

violence. Male survivors of sexual violence have largely avoided speaking out or claiming compensation for fear of intense stigmatisation. Particularly in the context of Balkan culture, sexual violence against men remains an immense taboo. Due to the current scarcity in first-hand accounts of male survivors of sexual violence in ex-Yugoslavia, additional psychological rehabilitation programmes should be made available to men survivors.

It is only by facing the atrocities and realities of life that we may one day learn.

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