

University of Coimbra
European Master's Degree in Human Rights and Democratisation
A.Y. 2017/2018

Transitional justice or Transitional injustice?

A gendered analysis of transitional justice, with a case study on
Bosnia and Herzegovina

Author: Anisa Bina
Supervisor: Jonatas Machado
Co-Supervisor: Carla Marcelino Gomes

Abstract

This work will seek to prove that even though women are left out of transitional justice processes, and their agency is left unrecognized, through their own initiative they prove to be active agents of change and work towards bringing justice to the community. Transitional justice is not only an opportunity for rebuilding the society, but also for eliminating inequalities, and changing traditional gender roles. Women have been entirely absent or highly underrepresented throughout transitional justice processes, while their presence is reduced to passive victimhood, leaving their agency unrecognized. This work assesses the gendered implications in transitional justice, and seeks to explore the reasons for the exclusion of women by analysing how masculinity impacts war, and the ways this flows as a continuum in the post-conflict period. The first chapter defines and analyses transitional justice efforts in Bosnia and Herzegovina, while the second chapter analyses the gendered implications of the war in Bosnia. The third chapter will establish the link between transitional justice and gender, while the final chapter will implement this analysis to the role of women in transitional justice processes in Bosnia and Herzegovina. The results show that even though their agency is not recognized, women in Bosnia have managed to work towards justice through their own initiative.

Table of Contents

Introduction	5
1. Conceptual framework	8
1.1 Transitional Justice.....	8
1.2 Gender.....	9
2. Transitional Justice Mechanisms and Bosnia and Herzegovina	11
2.1 What are Transitional Justice Measures?	12
2.2 The right to truth	14
2.3 Truth Commissions	15
2.3 Memory	17
2.4 Apologies	18
2.5 Restorative Measures	19
2.6 International Criminal Justice Measures	21
2.6.1 The ICTY.....	23
2.7 The role of the international community within transitional justice	27
Conclusion.....	29
3. Gendered Paradigms of war	30
3.1 War, nation, ethnicity and patriarchy.....	30
3.2 The interplay between war and masculinity, patriarchy, nation.....	32
3.3 Where are women located at times of war?	35
3.4 The war in the Balkans – Motherhood and Nationalism.....	38
3.5 Wartime rape and the interplay between masculinity and ethnicity	41
Conclusion.....	45
4. Transitional justice and gender-where are women located in the field of transitional justice?	45
4.1 Developments in including women in transitional justice	47
4.2 Potential reasons for the exclusion of women from transitional justice.....	51
4.3 Are women only victims?.....	56
4.4 Women as perpetrators.....	58
4.5 Why should women be included in Transitional Justice?	60
Conclusion.....	62
5. Gendered implications within transitional justice processes in Bosnia and Herzegovina	63

5.1 The Dayton Agreement and the Office of the High Representative for Bosnia and Herzegovina– the international community’s gendered involvement.....	64
5.2 The impact of leaving gender out of transitional justice on women.....	68
5.3 Marginalization of women in post-war politics.....	71
5.4 Women’s agency through civil society.....	72
5.5 Women’s agency through testifying in courts	75
5.6 Women’s agency in combating denial of truth.....	76
5.7 Women’s agency through the quest for truth.....	76
Final Conclusion.....	78
Bibliography.....	84

Introduction

The war that ravaged Bosnia and Herzegovina (BH)¹ in the 90s saw some of the worst atrocities committed since after the World Wars. The territory of BH consisted of three main ethnic communities, the Bosnian Muslims, Bosnian Serbs and Bosnian Croats. With two fifths of the population the Bosnian Muslims formed the majority. After the crisis and the following breakup of Yugoslavia, each of the entities that once made up the socialist republic proclaimed independence. Although found in a highly vulnerable position Bosnia and Herzegovina declared independence as well. Immediately, after the declaration of independence, war broke out between Bosnian Serbs who began firing on Sarajevo because they opposed the independence, and the Bosnian Muslims.²

One of the worst episodes of the war is without doubt the genocide in Srebrenica. In July 1995, a town which was declared a UN “safe zone” became the scene of genocide and ethnic cleansing. In only a few days Bosnian Serb forces killed more than 8,000 Bosnian Muslim men and boys, while expelling more than 20,000 civilians. Over 12,000 persons are missing to this day.³ The International Criminal Tribunal for the Former Yugoslavia (ICTY) concluded that the killings and the mass expulsion of civilians amounted to genocide and crimes against humanity. The principal responsibility was put on senior officials of the Bosnian Serb army.⁴ In 1999, UN Secretary General, Kofi Annan stated that “we have failed to do our part to help save the people of Srebrenica from the Serb campaign of mass murder”⁵ thereby recognizing the failure of the international community to protect. Beyond such an atrocity, this war saw the longest siege of modern history, the Siege of Sarajevo which lasted 44 months. During this siege, more than 14,000 people lost their lives, including 5,604 civilians (among which 1600 were children).⁶

In addition, there is extensive evidence of numerous concentration camps where thousands of Bosnian Muslims had to face the most gruesome tortures. Among tortures that they witnessed, rape was the most prominent. Mostly women, but also men were raped in all of these camps. It is reported that more than 20,000 women and 3,000 men were raped in these

¹ It should be noted that throughout this work the terms Bosnia and Herzegovina, BH and Bosnia will be used interchangeably

² Lampe JR, “Bosnian Conflict” (*Encyclopædia Britannica*)

³ RFE/RL, “Međunarodna Komisija Za Nestale: Podržati Istinu o Srebrenici” (Radio Slobodna Evropa July 11, 2018) <<https://www.slobodnaevropa.org/a/29357068.html>>

⁴ Smith RJ, “Srebrenica Massacre” (*Encyclopædia Britannica* November 22, 2017)

⁵ Ibid

⁶ Rosana Stojmenović, “Najduža Opsada u Povijesti: U Sarajevu Poginulo 14.000 Ljudi” (*24sata.hr* March 22, 2018)

camps.⁷ However, one should keep in mind that this number is most likely even higher; however the social stigma and shame that revolves around such a taboo topic prevents victims from reporting. It cannot be disputed that among the three communities living in Bosnia and Herzegovina, Bosnian Muslims form the majority of the victims. Namely, 83.33 percent of the civilians who were killed or are still missing as a result of wartime violence were Bosniak; 10.27 percent Serb; and 5.45 percent Croat.⁸ The war saw around one million Bosnians displaced within the country and a further million driven abroad. It is estimated that half the population moved from their home.⁹

The war ended with the Dayton Peace Agreement in 1995, which preserved Bosnia “as a single state made up of two parts, the Bosniak-Croat federation and the Bosnian Serb Republic.”¹⁰ As it remains to be seen in the following chapters, this peace agreement failed to diminish the ethnic division in the country, and rested on undemocratic principles which resulted in a peace which is not self-sustaining. In addition, the Dayton Peace agreement “reaffirmed the patriarchal nationalism as a dominant ideology and social system in post war Bosnia.”¹¹ The gendered hierarchies embedded in the agreement and which resulted from such ideologies provided for a gendered peace gap.

Transitional justice¹² can no longer be understood as a neutral field, but “rather as a platform for realigning power and legitimizing certain narratives, structures and actors.”¹³

Furthermore, today’s transitional justice and peacebuilding practices tend to “re-entrench gendered hierarchies, ignore women, or limit their presence to being passive victims in need of protection.”¹⁴ This thesis work will provide an analysis on the effectiveness of transitional justice efforts through a gendered lens, with a specific focus on Bosnia and Herzegovina. The aim of this thesis is to prove if transitional justice as a field is equally just towards all members of a society, or do the power relations exhibited by the many actors involved provide a form of peace which does not rest on human rights principles. Transitional justice is

⁷ Annika Bjorkdahl and Johanna Mannegren Selimovic, ‘Advancing Women Agency in Transitional Justice’ (2015) 46 Security Dialogue 1, 13

⁸ Diane F. Orentlicher, ‘That Someone Guilty Be Punished, the Impact of the ICTY in Bosnia’ (International Center for Transitional Justice (ICTJ) 2010), 13

⁹ Cynthia Cockburn and Dubravka Zarkov, *Postwar Moment: Militarities, Masculinities and International Peacekeeping: Bosnia and the Netherlands* (Lawrence & Wishart 2002), 108

¹⁰ Clinton B, “Dayton Accords” (Encyclopædia Britannica June 27, 2013)

¹¹ Ibid n 7, 4

¹² Throughout this work, the term transitional justice and its abbreviation TJ will be used interchangeably

¹³ Ibid n 7, 5

¹⁴ Ibid

seen as a way to “redress past wrongs”¹⁵ however in the process of doing this transitional justice efforts may result in peace gaps.

Gender and women have been “glaringly absent from transitional justice programmes.”¹⁶ It is unfortunate that when a society is faced with a period of transition which provides the opportunity for changing traditionally embedded gender roles, it fails to do so. It is my belief that in order to understand the possible reasons for the exclusion of women from the field of TJ, gender and transitional justice should be analysed separately. As such chapter 1 will seek to give the reader a general understanding of what transitional justice is, and how its measures operate in the context of transitional justice processes in Bosnia. As a result, the reader will have a better understanding of the situation of gender within TJ measures in BH provided in chapter 4. On the other hand chapter 2 will deal with gender, and concepts such as masculinity, ethnicity and nation as well as patriarchy, while providing an analysis of the way the interplay of these concepts can influence the so called “gendered paradigms of war.” This analysis will link to the third chapter in understanding some of the possible reasons for the exclusion of women from the TJ field. Besides this analysis, chapter 3 will provide some of the recent developments in the inclusion of gender in TJ, as well as the ways women are perceived within the field of TJ. Finally, the last chapter will provide the case study analysis applied to the case of Bosnia and Herzegovina, on how its transitional justice efforts, and how these are reflected on women.

The methodology adopted throughout this research is of a qualitative nature. This research explores the academic literature, by studying various legal documents, academic papers, books, journals and articles. By applying a desk research of secondary sources the author explores academic literature on both transitional justice and gender. To comprehend where is gender located within transitional justice the author considers several UN documents, resolutions and general comments. The analytical research throughout chapter one and two was developed in order to construct the link between gender and transitional justice and to come up with conclusions within the case study. The limits of the research consist of a lack of substantial academic literature on the topic, specifically on Bosnia and Herzegovina. While one of the main challenges within gender in transitional justice is the overemphasis on women’s victimhood, the overemphasis is notable within literature as well.

¹⁵ Susanne Buckley-Zistel, *Transitional Justice Theories* (Routledge 2015), 14

¹⁶ Ruth Buchanan and Peer Zumbansen, *Law in Transition: Human Rights, Development and Transitional Justice*, 225

1. Conceptual framework

Prior to presenting the research, it is important to define the main foundational concepts of this work, namely transitional justice and gender. It needs to be noted that transitional justice measures will be defined and described in detail in the first chapter. In addition, several other concepts can be found and defined throughout the following chapters, as they do not constitute the foundational blocks of the whole thesis rather the concepts of specific chapters, thus were left out of the conceptual framework.

1.1 Transitional Justice

Before defining transitional justice, it is important to know to what kind of justice one is referring to. Citing the UN Secretary General, throughout this work justice will be seen such that it “implies regard for the rights of the accused, for the interests of victims and for the well-being of society at large.”¹⁷ By employing such a form of justice, TJ has gained global significance when dealing with the past in the aftermath of a conflict or repressive regime.

Transitional justice has gained global significance an approach of dealing with the past in the aftermath of violent conflict or dictatorial regimes. The term has come to describe an ever expanding range of mechanisms and institutions, including tribunals, truth commissions, memorial projects, and reparations, with the aim of redressing past wrongs, vindicating the dignity of victims and providing justice in times of transition.¹⁸ A 2004 report by the UN Secretary-General defined transitional justice as: “the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of largescale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include either judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.”¹⁹

Peacebuilding is a term which will be used throughout this work to emphasize efforts of the local and international community to reconstruct the society for a peaceful future. There is no agreed upon definition for peacebuilding, thus it is impossible to include a universally accepted definition. The former UN Secretary-General Boutros Boutros-Ghali has specified

¹⁷ UN Security Council, ‘The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies : Report of the Secretary-General’ (2004), 4

¹⁸ Ibid

¹⁹ Ibid

peacebuilding as “the creation of a new environment, not merely the cessation of hostilities facilitated by traditional peacekeeping.”²⁰

Transitional justice is seen as a part of the big peacebuilding project. As it will be proven throughout this work, transitional justice has evolved since its inception, thus throughout this work it will be understood as a “site power production, domination, negotiation and rejection involving the collaboration of various actors, institutions and individuals.”²¹ While this work will refer to peacebuilding in the traditional view of preventing violence and conflict in the post-conflict arena, it will also see peacebuilding as efforts towards establishing the socio-economic and legal conditions for a more prosperous life for all citizens of the society.

1.2 Gender

Gender is a complex, multi-layered and highly contested concept, and many definitions of gender can be found throughout literature. A common definition sees gender as a “constructed and contingent set of assumptions about female and male roles.”²² This work will look at gender as a socially constructed concept, because the aim of the work is to analyse if and how these socially constructed gender roles influence the field transitional justice. It should be mentioned that “gender” is a social label and not a description of biological traits, thus should not to be confused with “sex.” While “sex” describes the biological characteristics of being male or female, “gender” indicates the social and cultural characteristics that are associated with each sex.²³ Gender is seen a process which is constructed throughout the life of the individual, namely “throughout their lives, individuals learn what is expected, see what is expected, act and react in expected ways, and thus simultaneously construct and maintain the gender order.”²⁴ Gender plays a pivotal role during and after war, as it shapes the experiences of men and women through gendered social roles. These roles are formed by cultural, social, economic and political conditions, and expectations within the family, community and nation.²⁵

²⁰ Paul F. Diehl, *Peace Operations* (Polity 2008) 8

²¹ Bjorkdahl and Selimovic (n 7) 3

²² Linda Brannon, *Gender: Psychological Perspectives* (Allyn & Bacon 1997) 11

²³ Owen Blakemore, Judith E., Sheri A. Barenbaum & Lynn S. Liben. *Gender Development*. New York: Psychology Press, Taylor & Francis Group, (2009) 3

²⁴ Judith Lorber. “Night to His Day’: The Social Construction of Gender”. In *Paradoxes of Gender*. New Haven, Conn.: Yale University Press, (1994) 60

²⁵ Dyan Mazurana, Angela Raven-Roberts and Jane Parpart, *Gender, Conflict, and Peacekeeping* (Rowman & Littlefield Publishers 2005) 13

In addition, this work will look at the implications of masculinity on gender, and the gendered nature of TJ. Masculinity and femininity are concepts which consist of “behaviour expectations, stereotypes, and rules which apply to persons because they are understood to be members of particular sex categories.”²⁶ There are numerous forms of masculinities to be found within a single society, as well as forms of power relations which exist among them. Because of reasons of space, this work will focus on two forms of masculinity, namely militarized and hegemonic masculinity. Cynthia Enloe describes militarized masculinity as a “model of masculinity that is especially likely to be imagined as requiring a feminine complement that excludes women from full and assertive participation in post war public life.”²⁷ The reason for applying this form of masculinity to this work is because this thesis will deal with the masculine concepts of war, which are inherently militarized, and the ways these are reflected on the post-conflict period.

R. W. Connell conceptualized the theory of hegemonic masculinity in the 80s which is considered one of the most important theories in masculinity studies. Hegemonic masculinity is understood as “the most honoured way of being a man, [which] requires men to position themselves in relation to it, and ideologically legitimates the global subordination of women to men.”²⁸ As this type of masculinity, legitimates the subordination of women to men it is highly relevant for this work, as it will be used to see if the field of TJ uses such a form to justify the exclusion of women from its processes.

The reason for employing a gender analysis on transitional justice processes is to explore how gender norms influence the forms of marginalization towards women within the processes of this field. It is important to analyse gender norms as they establish how a society sees the delivery of justice, and also who is perceived as a victim. As a result of ignoring gender norms, the society is faced with an obstruction of justice, specifically to women. Through applying a gender sensitive lens, this work will look at the ways how gender hierarchies shape transitional justice and lead to a peace which is not gender just. An ungendered transitional justice process will lead to an ungendered peace which as it remains to be proven

²⁶ Laura Sjoberg and Caron E. Gentry, *Mothers, Monsters, Whores: Womens Violence in Global Politics* (Zed Books 2007) 6

²⁷ Cockburn and Zarkov (n 9) 23

²⁸ Brandon Hamber, ‘There Is a Crack in Everything: Problematising Masculinities, Peacebuilding and Transitional Justice’ (2015) 15

tends to re-entrench gender hierarchies by ignoring women in peace processes or limiting their presence to passive victims in need of protection.

2. Transitional Justice Mechanisms and Bosnia and Herzegovina

“Human beings are able to commit all kinds of ‘inhuman’ acts.”²⁹ In today’s world, we are witnesses of inhumane acts being committed every day. One thing that persists after each atrocity is the question of what now? Transitional justice is seen as the answer to this question. This stems from the fact that transitional justice is seen as a society’s attempt to come to terms with the past.³⁰ After providing a brief history of the field of TJ, this chapter will analyse the ways some of TJ’s mechanisms work, with a specific focus on Bosnia and Herzegovina.

Ruti Teitel traces back the origins of transitional justice after the Holocaust.³¹ The fact that transitional justice finds its inception after human rights violations of such a large scale such as the Holocaust, has shaped the way this field operates today, where it is usually invoked after a society has come out of a repressive regime or conflict.³² This period was characterized with inter-state cooperation, war crimes trials, and sanctions, while focusing on accountability of the state for its wrongdoings.³³ It can be said that phase one established the building blocks on which today’s transitional justice rests upon. Besides putting the focus on accountability of the state for the wrongdoings, it is important to highlight the inter-state cooperation which can be translated into today’s involvement of the international community in transitional justice processes. The period when transitional justice sealed its place as a field on its own occurred by the end of the twentieth century, which was characterized by political instability and conflict which leading to transitional justice being used in continuum for purposes such as peace and state building. It is said that this phase laid the foundation to the normalized law on violence.³⁴ Today, transitional justice is seen as a field which “has become a well-established fixture on the global terrain of human rights” and which demands

²⁹ William A. Schabas, Edel Hughes and Ramesh Thakur, *Atrocities and International Accountability: Beyond Transitional Justice* (United Nations University Press 2007) 18

³⁰ Bjorkdahl and Selimovic (n 7) 4

³¹ Ruti G. Teitel, ‘Transitional Justice Genealogy’ (2003) 70

³² Alexandra Zetes, ‘Beyond Passive Victimhood: The Narrative and Reality of Women in Transitional Justice’ (2016) 1294

³³ Teitel (n 31) 70-71

³⁴ *Ibid* 74

“an insistence against unwilling governments that it is necessary to respond to egregious violence and atrocity.”³⁵

2.1 What are Transitional Justice Measures?

Nagy posits that in today’s world the question has moved from whether something should be done after the atrocity to how it should be done.³⁶ Transitional justice measures can vary upon different national contexts. “While the insistence on addressing the past has become almost universal, the range of options remains vast, and the policy choices very complex.”³⁷ As such, it depends on the context of the conflict which transitional justice measures a country seeks to utilize, however they have the common goal of dealing with the legacy of the wrongdoings of the past. The goals of transitional justice measures range from establishing an official record of the past in order to combat official denial of the wrongdoings, to restoring the dignity of victims, ending violence and preventing it from happening in the future; creating a ‘collective memory’ for a new future; forging the basis for a democratic political order which respects human rights; identifying the perpetrators of the past atrocities and holding them accountable; promoting reconciliation; educating the population about the past; and recommending ways to prevent violations from happening in the future.³⁸ If achieved these goals would ensure that the society transitions into a better future, and develops a just form of peace.

To respond to the pressing needs of the transitioning society, a country utilizes transitional justice measures, which besides bringing peace aim to bring justice to the society in question. The literature on transitional justice provides several categories of measures, where they are usually distinguished between judiciary and non-judiciary.³⁹ However, the legal classification of transitional justice measures is not enough if one fails to take into account the social aspect of it. If the aim of TJ is to bring justice to a society, then transitional justice measures should focus on the social part of justice as well.

David Roman provides four categories of transitional justice measures based on their social effect on the recipients. Reparatory measures are victim oriented and aim to redress the

³⁵ Buchanan and Zumbansen (n 16) 215

³⁶ Buchanan Zumbansen (n 16) 216

³⁷ Hugo Van der Merwe, Victoria Baxter and Audrey R. Champan, *Assessing the Impact of Transitional Justice: Challenges for Empirical Research* (United States Institute of Peace Press 2009) 2

³⁸ *Ibid* 3

³⁹ UN Secretary General (n 17) 4

consequences of violations for victims, and validate their experiences. Retributive measures are perpetrator oriented and include. The third category includes reconciliatory measures, meaning those measures which have an effect on the “social relationship between victims and transgressors and reconciliation in a divided society. Apology, expressions of regret, and confessions belong to this category.” The final category is that of revelatory justice measures, which includes those measures which seek for the establishment of the truth such as truth commissions.⁴⁰ It is important to take into account both the legal and social aspect, as the focus on transitional justice solely as a legal field, at times fails to take into account occurrences such as social injustice, which because of social norms can have particular consequences for marginalized members of the society.

The way a country utilizes, or fails to properly utilize transitional justice measures is dependent on how it sees the notions of peace and justice. It should be noted that peace does not mean only the absence of war; peace comes when the appropriate conditions for social justice are set. Through his work, Johan Galtung has made distinctions between negative and positive peace where “the absence of armed conflict can be defined as negative peace, and positive peace means the absence of both direct physical violence and indirect structural and cultural violence.”⁴¹ While transitional justice seeks to bring justice to the whole society it should also give specific attention to the groups who risk to be faced with indirect forms of violence and social injustices. As this group usually includes women, special attention should be put on ensuring that women do not find themselves in situations where their security is threatened. To further develop on this point, it should also be decided if economic deprivation constitutes a threat to security especially when those that are most vulnerable to it are women. The former UN Secretary General has stated that “the relationship between massive economic deprivation and violence needs to be more carefully considered in transitional processes.”⁴² The debate on security has produced viewpoints where the concept of security is seen as encompassing physical, social, economic, and sexual security.⁴³ However, if all these types of security are combined in a way which affirms the relevance of gender then it could be said that gendered security is also achieved.

⁴⁰ David Roman, ‘What We Know About Transitional Justice: Survey and Experimental Evidence’ (2017) 154-155

⁴¹ Fionnuala Ní Aoláin, Women, Security, and the Patriarchy of Internationalized Transitional Justice (2009) 1064

⁴² Ibid 1065

⁴³ Ibid

Acknowledgment measures which have the simple aim of acknowledging the violations and wrongdoings that occurred in the past include: truth commissions, memorials and official apologies.⁴⁴ Measures of acknowledgment are crucial for a transitioning society since they work against the denial of facts, the acknowledgment of truth, and ultimately lead to rebuilding of the society through trust and the restoration of dignity of victims. Furthermore, as it shall be seen in the below paragraphs acknowledging the past and working against denial is crucial for a divided country such as Bosnia and Herzegovina, since denial or several versions of what happened can impede the work of other transitional justice measures

2.2 The right to truth

At the core of acknowledgment measures is the establishment of the truth about the past. The right to truth is a recognized human right in international law, which has taken an increasing importance in the recent decades.⁴⁵ It is seen as the right to which every victim and their family is entitled to.⁴⁶ Beyond this, I would argue that the right to truth is something which the whole society needs and is entitled to know in order to come to terms with the past. The report of the Office of the UN High Commissioner for Human Rights also extends the notion of victim as the holder of the right to truth, to a collective dimension. It cites the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, which state that “every people has the inalienable right to know the truth about past events.”⁴⁷ By extending the right to truth as the right of a society, it is ensured that the truth is not manipulated, and that denial does not occur. Societies which come out of conflict are characterized with multiple versions of the truth, especially societies with a number of ethnic communities. In addition, the importance of having a truthful account of events is crucial as it can shape the work of other transitional justice measures, such as truth commissions. The Updated Set of principles for the protection and promotion of human rights through action to combat impunity reaffirm the importance of the right to truth. Principle 2 states “every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through

⁴⁴ Olivera Simić, *An Introduction to Transitional Justice* (Routledge, Taylor & Francis Group 2017) 4

⁴⁵ UN Commission on Human Rights, ‘Study on the Right to the Truth, Report of the Office of the United Nations High Commissioner for Human Rights’ (United Nations 2006) 4

⁴⁶ Ibid

⁴⁷ Ibid 11

massive or systematic violations, to the perpetration of those crimes.”⁴⁸ Principle 4 expands the right to truth as applying to victims and their families, while principle 1 puts the duty of ensuring the right to truth on the state. For a society to establish the truth and to omit conflicting versions of it, it needs to effectively implement certain transitional justice measures. These measures analyse past events and establish an “official” truth. One such measure is truth commissions.

2.3 Truth Commissions

Hayner contends that “even successful prosecutions do not resolve the conflict and pain associated with past abuse”, which has led to the transitional authorities to turn to truth seeking mechanisms in their strategy to address past atrocities.⁴⁹ A truth commission operates in such a way that it combines the testimonies of thousands of victims and publishes its findings in a final report. As such it is a non-judicial body with no legal powers. However, the victim centred approach is valued in such a way that for many it represents “the first sign of acknowledgment by any state body that their claims are credible and that the atrocities were wrong.”⁵⁰

One of the aims of truth commissions is to clarify and formally acknowledge past abuses, thereby preventing denial. Through numerous interviews with victims, these commissions provide a detailed analysis of the past events. The outcome of these interviews produced in the final report provides a qualitative “historical account, leaving the country with a written and well-documented record of otherwise disputed events.”⁵¹ By analysing in detail the causes and consequences of the wrongdoings, this TJ measure not only uncovers the truth and helps a society come to terms with their past, but also ensures that memorialization of the events takes place within the community. Beyond establishing the truth and responding to the needs of victims, truth commissions aim to: contribute to justice and accountability, outline institutional responsibility and recommend reforms as well as promote reconciliation and reduce tensions from past violence.⁵² I would argue that in order for a society to come to terms with the past and accept the truth, the work of a truth commission is crucial. Truth

⁴⁸ UN Economic and Social Council, ‘Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity’ (2005)

⁴⁹ Priscila Hayner, *Unspeakable truths: transitional justice and the challenge of truth commissions* (New York, N.Y., Routledge 2011) 14

⁵⁰ Ibid 16

⁵¹ Ibid 25

⁵² Ibid 29-30

Commissions are an increasingly used measure in transitioning societies. There have been at least twenty one truth commissions established around the world since 1974.⁵³ Bosnia and Herzegovina has not established a truth and reconciliation commission yet, while this remains a highly debated topic in the country. The importance of uncovering the truth and establishing an official record of it is crucial for a divided country. It can happen that even though events are recorded, they can be disputed or intentionally misrepresented to serve political purposes. In Bosnia and Herzegovina, despite the close reporting of the war, there are three contradictory versions of the official truth.⁵⁴ In 1998, the idea of a truth commission for Bosnia and Herzegovina came up in order to “establish one agreed-upon and well-documented historical account.”⁵⁵ Conflicting versions of the truth generate consequences for the society in the future. For the case of Bosnia and Herzegovina, this was noted in 1997 where the leader of one of the three ethnic communities stated “in the process of creating three conflicting versions of the truth, if we keep going along this path, fifty years from now our grandchildren will fight again over which one is correct.”⁵⁶ This also highlights the correlation between uncovering the truth and guaranteeing non-recurrence of such atrocities in the future, which as previously explained is one of the aims of a truth commission. In addition, as one of the functions of a truth commission is to provide a detailed analysis of the causes and consequences of the wrongdoings in the past, it would reveal what factors within the socio-cultural make-up of the Bosnia and Herzegovina community contributed to the occurrence of such atrocities.⁵⁷ It is argued that a truth commission would help the society explore its own defects which made the atrocities happen, while facilitating a dialogue between the communities with the aim of uncovering the truth.

A truth commission focuses on the victim more than any other transitional justice measure. In Bosnia and Herzegovina the only platform where victims could express themselves was through court trials. There were only a limited number of victims who were able to act as witnesses, which led to discontent within the community. As such, the establishment of a truth commission in Bosnia and Herzegovina can be seen as an effective way of uncovering the truth, while giving victims a voice and ensuring that their stories are preserved as part of the history of the country.

⁵³ Ibid 14

⁵⁴ Ibid 27

⁵⁵ Ibid

⁵⁶ Neil J. Kritz and Jakob Finci, ‘A Truth and Reconciliation Commission in Bosnia and Herzegovina: An Idea Whose Time Has Come’ 51

⁵⁷ Ibid 52

However, despite the growing interest among the society to establish a truth commission many experts have noted that it might be too early to make such an effort. As stated by Clark it is “premature and overly ambitious at this stage; it is akin to trying to build a house before the foundations have been properly laid.”⁵⁸ However, I would argue that the multiple versions of the truth and the denial of atrocities bear consequences for the whole Bosnian society, and as such prevent “the foundations of the house to be properly laid.” Furthermore, it is claimed that an argument in favour of starting a truth commission right after the conflict is that after much time goes by the public attention may fade.⁵⁹ As it shall be seen through the analysis of the other TJ measures, denial of the truth and lack of an official truth record is one of the biggest impediments towards an effective transitional justice in BH. If through a truth commission, the truth would be formalized and accepted by the three communities, it would positively shape transitional justice efforts. Apart from that, it would help the country move on, look past the atrocities and maybe even pave the way towards reconciliation.

2.3 Memory

The right to truth is of utmost importance and as such should not be limited only to truth commissions. To ensure that the truth is established and that it is not manipulated with the passing of time, other transitional justice efforts need to be made. Memory work, through different forms such as museums, memorials or different activities, serves the purpose of not forgetting the past, and preserving the truth. Memorials are “material or virtual objects which serve to represent events or persons who should not be forgotten.”⁶⁰ Victim memorials not only restore the dignity of victims through symbolic reparation, but also deliver the message that the whole society remembers the victims, and acknowledge their experiences.⁶¹

Memorials certainly work towards preserving the past, however if the past is contested by other parties this measure can generate debate or deepen the conflicting relationships between communities. The ethnic division within Bosnia and Herzegovina, and the conflicting stories which exist within the ethnic communities, have led to debates arising for almost all transitional justice measures. Subject to debate were also the memorials which were erected throughout the whole country. One of the most known memorials is the one in Srebrenica, the Potocari Memorial Center. It is located outside the town of Srebrenica, in the village of

⁵⁸ Janine Natalya Clark, ‘Does Bosnia Need a Truth and Reconciliation Commission? Some Reflections on Its Possible Design’ (2012) 226

⁵⁹ Schabas, Hughes and Thakur (n 29) 17

⁶⁰ Simic (n 44) 250

⁶¹ Ibid 254

Potocari. The village of Potocari, was declared a UN “safe zone,” but ironically enough after a few days this “safe zone” was transformed to the “journey of death” as it became the site of genocide. The construction of this memorial was initiated by the “Mothers of Srebrenica”, the mothers and wives of those who were killed and are missing to this day. They held a gathering in Potocari in 1999 to commemorate the victims. However, as Potocari today is a part of the Serb-led entity Republika Srpska, this was opposed by the Bosnian Serb elite. After the international community stepped in, it was agreed that the memorial would be placed in Potocari. The memorial was inaugurated in September 2003 by US president Bill Clinton.⁶² By remembering atrocities such as these, it educates people on these occurrences and prevents such atrocities from happening again.

2.4 Apologies

Official apologies are seen as a form of symbolic reparation, through the public acknowledgement that violations have occurred in the past. Apologies are usually done by political and military leaders and directed to the victims, their families but also the whole community. They reflect the community’s recognition to the crimes that occurred and can be an important step towards reconciliation. However, apologies should be combined with other transitional justice measures, to ensure full restitution to the victims and the society as a whole.⁶³

In the case of Bosnia and Herzegovina, apologies are a controversial topic. In 2010, after 13 hours of debate the Serbian Parliament passed a resolution apologizing for the massacre in Srebrenica but did not call it genocide. Furthermore, Serbia’s president, Tomislav Nikolic, during a TV interview apologised for atrocities such as Srebrenica who also did not refer to it as genocide, but a crime. The atrocities that happened in Srebrenica are widely recognised as genocide including the ICTY and ICC.⁶⁴ It can be concluded that these apologies were found as insincere by the community and the victims’ families. It is in cases like these where the wording of the apologies should be highlighted in order for it not to seem insincere and thus result ineffective. Furthermore, apologies such as these can produce counter effects such as

⁶² Ibid 256

⁶³ Ruben Carranza, Cristián Correa and Elena Naughton, ‘More than Words, Apologies as a Form of Reparation’ (International Center for Transitional Justice (ICTJ) 2015)

⁶⁴ ‘Serbian President Apologises for Srebrenica 'Crime’ (BBC News, April 25, 2013); Lindsey D, ‘A Message to Europe: Serbia Apologizes for Srebrenica Massacre - Spiegel Online – International’ (Spiegel Online, March 31, 2010.html

the denial of truth, which ultimately leads to disagreement within the communities and lack of reconciliation.

2.5 Restorative Measures

After the end of conflict or repression, hatred is said to be the strongest survivor.⁶⁵ For this reason restorative measures are of a crucial importance for social healing. It can be implied from the name that restorative measures aim to restore to the victims something which was lost during the violation. As such they are victim oriented, and the state bears the duty to provide for this measure. This can be implied from the underlying principle of the law of state responsibility which state that “every breach of an international obligation attributable to a state carries with it a duty to repair the harm caused.”⁶⁶ It is important to note that restorative justice is also referred to as “survivor’s justice,” this is because many victims prefer to be identified as survivors to emphasize that they are not “passive beings who lack agency and capacity to act.”⁶⁷

Restorative measures rely on the right to remedy which in the case of transitional justice includes measures such as reparations. The right to a remedy is part of international law and other human rights treaties⁶⁸, however the most detailed record on what reparations constitute and how they should be applied remains the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian law.⁶⁹ Van Boven, one of the first experts tasked to draft these principles stated what many experts, and victims of violations still think: large scale human rights violations have an irreparable nature and as such no remedy can proportionally address the suffering.⁷⁰ I would state that while it is true that reparations cannot proportionally address the suffering, transitional justice measures should focus on the socioeconomic needs of the victims, which after a conflict are usually scarce. As such they should be recognized, and properly adhered to. Reparations form a useful way of addressing the socioeconomic needs while ensuring social justice is also provided.

⁶⁵ Cynthia Cockburn, ‘Gender, Armed Conflict and Political Violence’ (The World Bank 1990) 18

⁶⁶ Koen de Feyter and others, *Out of the Ashes: Reparation for Victims of Gross and Systematic Human Rights Violations* (Intersentia 2005) 12

⁶⁷ Schabas, Hughes and Thakur (n 29) 37

⁶⁸ Universal Declaration of Human Rights art.8, Ibid (n 66) 11

⁶⁹ Ibid (n 66) 12

⁷⁰ Ibid (n 66) 15

The aforementioned principles affirm the duty of the state as required by international law, to ensure that their legal system provides effective access to justice, and makes available appropriate remedies, including reparation.⁷¹ In order to know who is liable for such remedies, the term victim should be defined. A victim is defined as “persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights [...] Where appropriate, and in accordance with domestic law, the term ‘victim’ also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.”⁷² The notion of a victim has been expanded also to people who have suffered indirectly such as the family of the victim.

Reparations are highly influential in their ability to provide social justice and address the socioeconomic needs of certain members of the post-conflict society. In the case when women face economic hardships, reparations hold the potential to address the feminization of poverty that comes as a result of war, and as such can transform gender relations within the society. However, reparation programs, like many other transitional justice mechanisms for redress and recovery continue to be largely blind.⁷³

In the case of Bosnia and Herzegovina, the reparation programme continues to be gender blind, while it has relied on ethnical and political privileges.⁷⁴ Moreover, there have been cases where military leaders who were “perceived as peace spoilers” have enjoyed benefits.⁷⁵ Considering Bosnia and Herzegovina’s low economic development the demand for monetary compensation among the victims is very high. There are two groups liable for compensation within Bosnia and Herzegovina, “(1) persons who were directly linked to one of the four armies recognized on the territory of Bosnia and Herzegovina during the war and their families, whose benefits are dealt with by the ministries for veterans; and (2) civilian victims of war, i.e. civilian survivors who were harmed during the conflict, and families of killed individuals.”⁷⁶ However, most war related assistance goes to military-related. Namely, in 2009 there were almost 100 thousand military related payments while there were less than 11

⁷¹ UNGA, ‘Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law’ VIII

⁷² Ibid (n 71)

⁷³ Bjorkdahl and Selimovic (n 7) 9

⁷⁴ Jessie Hronešová, ‘Might Makes Right: War-Related Payments in Bosnia and Herzegovina’ (2016) 246

⁷⁵ Ibid

⁷⁶ Ibid 345

thousand civilian payments in the Federation of Bosnia and Herzegovina. The reason why most of war related assistance goes to the military is because this group is larger. Apart from the families of the dead military personnel, the families of the 31,000 missing are also entitled to payments if they declare their missing as dead.⁷⁷ Victims of sexual violence can receive compensation only if registered as such. A lot of stigma and discrimination revolves around victims of sexual violence, leading to many victims not declaring themselves as such. Thus, from 20,000–40,000, mostly women (but also an estimated 3,000 men), victims of sexual violence, only around 890 are registered as such.⁷⁸

Because disabled veterans and families of killed soldiers receive preferential treatment compared to war veterans or civilian victims of war, many civilian victims try to claim battle injuries or declare their dead as members of the military in order to access the military benefits. Strategies such as fake certificates have emerged, while widows usually do not remarry in order to keep their deceased husbands' military pensions. Families of the missing also have to file a civil lawsuit or declare their missing dead to unlock pensions and inheritance rights.⁷⁹ From all of these difficulties that the victims face one can conclude that the restorative measures in Bosnia and Herzegovina have failed to fulfil its principle goal, the restoration of human dignity to victims. Having to face all of these difficulties in order to obtain compensation is a highly complicated and degrading process for the victims, which can lead to a loss of their dignity rather than its restoration.

2.6 International Criminal Justice Measures

The century long question of how to punish someone was dealt by philosophers such as Aristotle, Kant and Hegel, where they have all dealt with different rationales for punishment such as utilitarian, duty based or informal ones done through community and restorative justice.⁸⁰ International criminal justice is a form of serving justice through punishing perpetrators.

International crimes which include genocide, crimes against humanity and war crimes, seek prosecution in order to ensure an effective transitioning of a society after these crimes happen.⁸¹ As such, criminal justice forms an important part of transitional justice. Sometimes

⁷⁷ Ibid 346

⁷⁸ Ibid 347

⁷⁹ Ibid

⁸⁰ Schabas, Hughes and Thakur (n.29) 32

⁸¹ ICC Rome statute

also referred to as the international community's response to mass atrocities, international criminal justice seeks to put accountability for international crimes.⁸² This stems from the fact that after the conflict or repressive regime the domestic prosecution may be inexistent, or not having the capacities for dealing with crimes of such a scale. In cases like these, the international community provides its assistance. The establishment of the two ad-hoc tribunals the International Criminal Tribunal for the former Yugoslavia (ICTY) and Rwanda (ICTR) was an important step for international criminal justice.⁸³

After the establishment of the ICTY in 1993 and the ICTR in 1995 it was confirmed that there is a persistent need for international criminal justice. This led to the establishment of the permanent International Criminal Court (ICC) in 1998, with the adoption of the Rome Statute of the International Criminal Court.⁸⁴ Beyond the establishment of the ICC which proved that international crimes cannot go unpunished, other developments in the field of international criminal justice include also the establishment of hybrid courts. Examples of such courts include: the Special Court of Sierra Leone, Bosnian War Crimes chamber, Extraordinary Chambers in the Courts of Cambodia and so on.⁸⁵

The preamble of the Rome statute states the purpose of the ICC as “to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes.”⁸⁶ As such one can conclude that the broad aim of international criminal justice is to put accountability on the perpetrator and prevent atrocities from happening again. As it was seen throughout this chapter, most transitional justice mechanisms are victim oriented. By seeking to find accountable one individual, criminal justice puts the focus on the perpetrator. On the other hand, criminal justice can be viewed as victim oriented as well. By establishing individual responsibility it can bring retributive justice to the victim, since by prosecuting the perpetrator of crimes it can restore victim's dignity and deliver justice. Trials of leaders of a repressive regime provide the message that such atrocities will not be tolerated in the future. Furthermore, by individualising guilt it will not allow for entire nations or ethnic groups to be held accountable. International criminal justice can also establish a historical record of the past.⁸⁷ However, as it remains to be seen with the example of the ICTY when the narratives

⁸² Hayner (n 49) 48

⁸³ Ibid 49-50

⁸⁴ Ibid 51

⁸⁵ Ibid 53

⁸⁶ Ibid 55

⁸⁷ Ibid 54-56

of what happened in the past are contested by different ethnic groups this goal can result ineffective if not handled properly.

One of the debates concerning criminal justice is the peace vs. justice one. This debate revolves around “whether the goals of international criminal justice-ensuring accountability and ending impunity-are sufficiently compelling in their own right to warrant mounting international criminal trials, or whether they should be considered not as absolute, but as relative goals in the context of the political context in which international criminal justice operates at both the international and domestic level.”⁸⁸ It is argued that by pursuing criminal justice while the conflict is ongoing or frequently ended, the international community risks to prolong or reignite the conflict. This is because peace is still fragile. Sometimes the people from whom peace depends are those who are being held accountable by international criminal justice. This was clearly visible in the case of Ex-Yugoslavia.⁸⁹ As such, the peace and justice debate rests on the fear that criminal prosecutions could interfere with political agreements which are necessary to end the conflict.⁹⁰ However, this argument goes against the logic of human rights. Human Rights violations should be punished, even in cases if the peace agreements depend on the people who are being prosecuted. Perpetrators should be held accountable for their actions even if they are the new leaders of the post-conflict society. It is precisely large scale violations that transitional justice seeks to rehabilitate and prevent from happening again. Furthermore, as stated by Rosemary Nagy “there can be no lasting peace without some kind of accounting.”⁹¹ In addition, throughout the years it has become clear that these two notions are inseparable and interdependent and cannot be addressed in isolation.⁹²

2.6.1 The ICTY

The International Criminal Tribunal for the former Yugoslavia (ICTY) was a United Nations court of law established by the UN Security Council in May 1993 at the time when international crimes were happening in the Balkans. The tribunal was established in accordance with Chapter VII of the UN Charter, with the aim of restoring international peace and security, which gave effect to the doctrine of “responsibility to protect.” As the tribunal was established in the midst of the conflict its first aim was ending it. After the end of

⁸⁸ Ibid 57

⁸⁹ Ibid 57

⁹⁰ Schabas, Hughes and Thakur (n 29) 13

⁹¹ Buchanan and Zumbansen (n 16) 16

⁹² Schabas, Hughes and Thakur (n 29) 28

conflict, the tribunal dealt with bringing high profile political and military leaders to justice. Among the indicted officials were Radovan Karadzic and Ratko Mladic who were involved in the Srebrenica, as well as the former President of Serbia, Slobodan Milosevic.⁹³ Another important trial judgment was that of Bosnian Serb army general, Radislav Krstic. This judgment was the first in history to affirm that the criminal acts committed in Srebrenica, in July 1995 constituted the crime of genocide.⁹⁴ The ICTY indicted key individuals responsible for the atrocities, or removed individuals from the political scene thereby ensuring “space for change.” No matter how many judicial decisions this tribunal has finalized, it has shown that individuals who commit such crimes are going to be held accountable and face justice. Furthermore, it contributed to the rule of law and judicial reform, acted as a catalyst for the creation of specialised war crime courts in the region, while proving that international criminal justice is important and thus led to the establishment of the ICC.⁹⁵ Finally, the decisions of the ICTY have proven the facts and truthful records of the happenings, thus contributing to an indisputable historical record. This could lead to combating denial, keeping the memory alive, and helping the communities come to terms with their past.⁹⁶ However, the multiple narratives on the war persist even when the ICTY mandate ended, forming an obstacle to further developments towards aims such as reconciliation.

The legacy of the ICTY is indeed one of the most debated topics in the countries of the region. The impact of the ICTY on the domestic society can vary upon different factors. First of all, the court room testimonies of witnesses are said to have a therapeutic effect. To analyse this fact a study was done which included 87 interviews with victims who had testified at the ICTY. The study found that the therapeutic effect upon these witnesses disappeared after they returned to their hometowns. This was highly noted for those witnesses who had faced losses in their lives. Furthermore, many of them reported that they had felt “anger and helplessness once they learned about lenient sentences and reversals of punishments on appeal.”⁹⁷ As such, if one is to look at the impact of the ICTY on the witnesses then one could say that the positive aspect is diminished. This can stem from the fact that Bosnia and Herzegovina remained a divided society even after the war, contributing

⁹³ Simic (n 44) 50-59

⁹⁴ ICTY Remembers: The Srebrenica Genocide (1995 – 2015)

⁹⁵ Simic (n 44) 50-59

⁹⁶ About the ICTY | International Criminal Tribunal for the former Yugoslavia

⁹⁷ Roman (n 40) 159

to witnesses being confronted with social stigma and discrimination upon their return from the ICTY.

Beyond the direct effect that the ICTY trials had on the witnesses, they also affected the whole society in transition. Colleen Murphy argues that international trials can positively contribute to the society in transitions; however this is dependent on time, and other transitional justice measures adopted in the society. She gives the example of the Radovan Karadzic to illustrate this point. After 11 years of evading arrest, Karadzic was arrested in 2008 and in 2016 he was found guilty on 10 of 11 charges, including genocide, crimes against humanity, and violations of the laws or customs of war. However, he was acquitted on one count of genocide for massacres in other areas of Bosnia which are widely seen as having initiated the Bosnian War. There are two conflicting views on the Karadzic trial within the two communities in Bosnia and Herzegovina. Bosnian Serbs see the ICTY as one sided, and unjust, where crimes against Serbs have not been prosecuted. On the other hand, the Bosnian Muslims express scepticism of witnessing retributive justice. The genocide count on which Karadzic was acquitted has cast scepticism on the tribunals work, seeing this verdict as justification for the crimes committed by Serbs. It is noticeable that there are two conflicting viewpoints on the Karadzic trial. This can pose challenges for the transitioning society. These viewpoints further influence the already divided versions of the war itself and as such obscure the establishment of truth among communities. Murphy states that one of the determinants for viewpoints such as these was the length of time between the time the atrocities happened, the trial, and the trial verdict.⁹⁸

The reactions to the Karadzic trial point to the fact that the societal transformation is dependent on the effectiveness of other transitional justice measures. Because there are conflicting attitudes towards the trial, highlights that other transitional justice measures were not effective. In order for societal transformation to happen denial of wrongdoing must be overcome. In addition, for international trials to contribute to countering denial, the community in question must be receptive towards the verdicts of trials. If other transitional justice measures contribute to counter denial about the wrongdoings, then the international tribunals will also be seen differently and as such will the legitimacy of these proceedings. This is of a high importance since as it can be noted the partiality and standing of international tribunals is usually questioned among the society. Thus, as stated “the case of

⁹⁸ Colleen Murphy, ‘International Criminal Trials and the Circumstances of Justice’ (2017) 7-9

Bosnia points to the failure of domestic processes to counter denial about past atrocities or counter recognition of the need to alter the ideologies that facilitated atrocities in the first place.”⁹⁹ From this one can conclude that the way an international tribunal is seen by the local community is highly dependent on the implementation and effectiveness of other transitional justice measures.

Many have seen the formation of the ICTY as a manner of distraction by the international community from the failure to stop the war, while allowing them “to boost the self-image of concerned outsiders.”¹⁰⁰ However, as emphasized by Nagy, the international community tends to be absent from the scene of violence until it intervenes as the heroic saviour.¹⁰¹ Even though the United Nations Security Council Statute did not mention a mandate of the ICTY to promote reconciliation, it is known that besides serving justice and establishing the truth, the implied end goal of international tribunals is to facilitate the reconciliation process. However, the legacy of the ICTY points to the opposite of reconciliation for BH as the country remains as divided as before. A study which interviewed the citizens of two Bosnian towns, Prijedor and Mostar, and the Croatian town of Vukovar found that the ICTY judgments had contributed to a further division among the populations. These divisions partly stem from the fact that the local communities in Bosnia and Herzegovina have questioned the impartiality of the ICTY.¹⁰²

Susanne Buckley-Zistel defined reconciliation as “transforming the relations between rival sides from hostility and resentment to friendly and harmonious relations, a long-term endeavour that requires former antagonists to form new relations of peaceful coexistence based on mutual trust and acceptance, cooperation, and consideration of each other’s needs.”¹⁰³ To achieve reconciliation a society should focus on transforming their beliefs, attitudes, goals and emotions regarding the conflict, the relationship between the two communities and the community itself. Reconciliation is something which is up to the individual, and the community itself, and not the ICTY or any other body.

However, reconciliation remains a complicated task for Bosnia and Herzegovina because of its ethnic makeup of the communities. It was stated before that both reconciliation and the

⁹⁹ Ibid 10

¹⁰⁰ Johanna Mannegren Selimovic, *Perpetrators and Victims: Local Responses to the International Criminal Tribunal for the Former Yugoslavia*, (2010) 52

¹⁰¹ Buchanan and Zumbansen (n 16) 223

¹⁰² Ibid

¹⁰³ Buckley-Zistel (n 15) 42

truth are seen as contested concepts.¹⁰⁴ However, if one is to start from the argument that if established, the truth is sufficient for reconciliation then the ICTY judgments should be seen as paving the way for reconciliation, but only if this version of the truth is accepted by the local population. Furthermore, by individualising guilt for certain human rights violations it is anticipated that there would be a reduced need to hold the entire ethnic community accountable for those violations. However, because of the fact that the denial of the truth is highly present in Bosnia and Herzegovina, reconciliation efforts have been met with failure. Namely, the Bosnian community stress that the main obstacle towards reconciliation is the denial of the truth by the Serbian community. Thus, even though the ICTY has made efforts towards establishing a truthful record of what happened during the war in Bosnia and Herzegovina, the efforts should be shifted in encouraging all of the communities living within Bosnia and Herzegovina to accept it. As such, it has been proposed that emphasis should be put on developing a shared history which encompasses all the perspectives and experiences felt during the war.¹⁰⁵ In order to bring about reconciliation for a society, contact among the communities is crucial.

2.7 The role of the international community within transitional justice

At times when a society is faced with the need of re-building and transition, it usually lacks human, financial as well as technical resources. Thus, most societies cannot finance its own transitional justice processes leading to the involvement of external actors, such as the international community. The involvement of the international community within a country's transitional justice processes has many implications. Even though, the intentions of this involvement are positive as they seek to rebuild a society, they might produce counter effects if they are not carefully implemented. In times of transition the local community finds itself between "the multiple interests of other states, their willingness to articulate views about a regime or conflict, and their formal or informal interaction with key actors at pivotal change moments."¹⁰⁶

It is said that the international community exhibits tendencies "to impose 'one-size-fits-all', technocratic and decontextualized solutions."¹⁰⁷ In his 2004 report on transitional justice and the rule of law, the UN Secretary General has stated that the international community should

¹⁰⁴ Simic (n 44) 56

¹⁰⁵ Janine Natalya Clark, 'The State Court of Bosnia and Herzegovina: A Path to Reconciliation?' (2010)

¹⁰⁶ Ni Aolain (n 41) 1058

¹⁰⁷ Buchanan and Zumbansen (n 16) 215

learn to “eschew one-size-fits-all formulas and the importation of foreign models, and, instead, base our support on national assessments, national participation and national needs and aspirations.”¹⁰⁸ Beyond this it is important for the international community to take into account the local cultures, traditions and experiences when pursuing transitional justice. Transitional justice measures should be designed in such a way that they respond to the local needs as much as possible. Even though this is of a crucial importance, the international community often fails to take into account local practices. This is partly because donors focus only on those transitional justice measures which comply with their own agendas. As such modern transitional justice practices usually focus on restoring the rule of law in post-conflict societies.¹⁰⁹ Very often this leads to internationalised legal “justice” to be abstracted from the lived realities.¹¹⁰ The lack of focus on the socio-economic needs brings many consequences to the society, which can be reflected in the lack of proper functioning of the already implemented transitional justice measures. Transitional justice should shift its focus to the social injustices which arise when civil and political rights are privileged in implementing transitional justice.

Susanne Buckley-Zistel argues that in order for transitional justice to contribute to sustainable peace for a country it should focus not only on legal justice but also to psychosocial processes, socioeconomic conditions and the political context. Furthermore, in order for a society to ensure a smooth transition to sustainable peace it should combine retributive and restorative aspects of justice as well as promote acknowledgment, truth and healing, while transforming political institutions and socioeconomic distribution. Transitional justice should put its focus to the needs of the local communities in order for its measures to respond to their local customs, and culture.¹¹¹

Furthermore, when designing transitional justice measures it is important to take into account the past of the country, even before the atrocities in order for the measures not to produce counter effects. Louise Arbour, the former UN High Commissioner for Human Rights has expressed that transitional justice should reach beyond the violations which occurred during the conflict, and address the violations which pre-dated the conflict and caused and contributed to it. She contends that with broadly defined aims, “transitional justice

¹⁰⁸ UN Secretary General (n 17) 1

¹⁰⁹ Buchanan and Zumbansen (n 16) 217

¹¹⁰ Ibid 218

¹¹¹ Buckley-Zistel (n 15) 34-35

practitioners will very likely expose a great number of discriminatory practices and violations of economic, social and cultural rights.”¹¹²

What is evident from the above analysis of transitional justice measures in Bosnia and Herzegovina is that not a lot has been for establishing an “official” truth and combating denial. This has generated consequences which are reflected on the effectiveness of transitional justice measures. The international community has played an extensive role in designing transitional justice measures in Bosnia and Herzegovina. Moreover, their role is sometimes seen as using Bosnia and Herzegovina as a “laboratory,” where the local population was neglected and only privileged voices could contribute to policy making.¹¹³ I argue that the lack of emphasis on the development of a truthful account of the past by the international community through outreach would have played a part not only in overcoming denial and paving the way for reconciliation but also in the international community being seen as more credible.

Conclusion

From the analysis of the aforementioned transitional justice measures implemented in Bosnia and Herzegovina one can see that the main goal of peace being established is clear. However, the effectiveness of transitional justice measures can be of a question if one is to look at long-term goals. A recurring obstacle to the effectiveness of these measures is the conflicting versions of the truth. Multiple versions of the truth have affected almost all transitional justice processes in Bosnia and Herzegovina, as such limiting their effect on the population. The view of each side that they are the victims while the others are the perpetrators is harmful as it affects transitional justice processes in a negative way. It should be noted that the quest for the truth, is something which not all countries in transition seek. In Mozambique there was no desire to remember, but rather to forgive and move on. In Rwanda there has not been a deep desire by the victimized Tutsi population to make a truthful account of the past.¹¹⁴ However the same cannot hold true for Bosnia and Herzegovina, since the lack of an official truth remains the main obstacle towards moving on.

If one is to start from the aim of transitional justice itself, which is to overcome the wrongdoings of the past in order to transition to sustainable peace, then one could say that

¹¹² Buchanan and Zumbansen (n 16) 224

¹¹³ Hronesova (n 74) 340

¹¹⁴ Schabas, Hughes and Thakur (n 29) 35

Bosnia and Herzegovina is an example of the opposite. The society has led itself into a stalemate of not overcoming the past, which impedes not only progresses in transitional justice, but also other areas such as economic prosperity and the sense of moving on. If reconciliation is the end goal of transitional justice then the denial of truth even more than two decades after the war remains a serious obstacle.

3. Gendered Paradigms of war

As stated before gender does not refer to anatomical or biological differences, but to the social construction “which is always culturally specific, of masculine and feminine as hierarchical and oppositional categories.”¹¹⁵ By incorporating the connection between gender, masculinity, ethnicity and nationalism, this chapter aims to analyse the gendered paradigm of war, contributing to the analysis in the next chapters by establishing the link between these concepts in the post-war and transitional period. While this chapter will first focus on the gendered paradigms of war in general, the second part of the chapter will comprise of a specific focus on these notions and the war in Serbia and Bosnia and Herzegovina.

3.1 War, nation, ethnicity and patriarchy

The experiences of women at times of peace are influenced by external gendered factors, which are even more highlighted at times of conflict. Gender is only one “axis of difference, which intersects with many other forms of identity and experience. Nationality, ethnicity, political and religious affiliation, caste, indigeneity, marital status, disability, age, sexual preference; all of these, and others, are important factors in determining women’s lived experiences of conflict and recovery.”¹¹⁶ Because all of these notions have an influence on gender during conflict as they are presented through power dynamics, before analysing them it is important that they are defined.

War is defined as the “institutionalised, regulated violence undertaken by nations or by organised groups within or across nations.”¹¹⁷ From the definition itself one can see that nation plays a significant role in war, as nationalism can be the primary reason for conducting the war. Throughout my research, on countless occasions I have been faced with statements

¹¹⁵ Lois Ann Lorentzen and Jennifer Turpin, *The Women and War Reader*, 41

¹¹⁶ Radhika Coomaraswamy, ‘A Global Study on the Implementation of United Nations Security Council Resolution 1325’ (UN Women 2015) 34

¹¹⁷ Ann-Dorte Christensen and Palle Rasmussen, ‘War, Violence and Masculinities: Introduction and Perspectives’ (2015), 192

that terms such as “nation” and “ethnicity” have proven difficult to define. It is argued that this difficulty stems from the fact that “male-stream thought, in general, has had in understanding the public manifestations of the process of identity construction.”¹¹⁸ One of the most prominent definitions of “nation” is provided by Benedict Anderson in his book “Imagined Communities”, where he argues that the nation is “an imagined political community - and imagined as both inherently limited and sovereign.”¹¹⁹ He argues that it is imagined since members of the nation will never know most of their fellow nation members, but they stick to the image of their communion.¹²⁰ The extent of how far members of a nation can go when this nation is under threat remains to be seen in the following paragraphs. Furthermore, it remains to be proven throughout the chapter that this imagined community, is most often an exclusively male community. On the other hand, there is also the naturalized character of the nation as explained by Herder, according to whom a nation is made of the sense of cultural belonging. Namely, common traditions, a collective memory grounded on a certain language shapes the nation. Through these a certain community attains a national identity, without which the state and its members cannot obtain the sense of communal belonging.¹²¹ In addition to nation, ethnicity also plays a crucial role in the ways how war unfolds, and the implications it has on gender. Anthony Smith defines ethnicity as a “named human group claiming a homeland and sharing myths of common ancestry, historical memories and a distinct culture.”¹²² As such, ethnicity comprises of certain characteristics with which individuals of a certain community identify. It can be observed that it is through the nation and ethnicity that a society organizes itself.

The presence of a militarized masculinity which is hegemonic in most societies sees the establishment of a “regime that exaggerates gender differences and inequality, and dictates complementary worlds for men and women during and after wars. In war militarist discourses elevate men to the world of arms and glory; women they relegate to the world of birthing and mourning.”¹²³ Masculine dominance is done through pursuing patriarchal ideologies. The word patriarchy originates in ancient Greece, and means the rule of fathers.¹²⁴ However, this concept has evolved in modern times. While before patriarchy was used to explain the

¹¹⁸ Ibid (n 115) 42

¹¹⁹ Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (Verso 1990) 6

¹²⁰ Ibid

¹²¹ Richard White, ‘Herder: On the Ethics of Nationalism’ (2005)

¹²² Anthony D. Smith, ‘National Identity and the Idea of European Unity’ (1992) 438

¹²³ Cockburn and Zarkov (n 9) 13

¹²⁴ ‘Patriarchy’ <<https://en.oxforddictionaries.com/definition/patriarchy>>

dominance of men over women within the household, nowadays it has been expanded to the public realm as well. Namely, in recent times patriarchy is seen as a social arrangement in which the society is ruled by men, and which influences the organization of the social structure within a society.¹²⁵ Both Friedrich Engels and Max Weber have argued that family centred patriarchy has been reflected in the general dominance of men in the society.¹²⁶ Patriarchy has become one of the predominant social structures in many societies around the world, allowing men to hold dominant positions in most areas and institutions of public life. Because of this they can exert dominance over members of society who are inferior, and are usually women.¹²⁷ Furthermore, it has been suggested that transitional justice as a field has become intrinsically implicated in patriarchal structures of governance.¹²⁸ Throughout this work, the term patriarchy will be used to explain the form of gender order which is characterized by a hierarchy among men, and of men over women, while arguing that nowadays patriarchy has been exaggerated to the point that it legitimizes male dominance, and makes female insecurity invisible and seen as normal. Female insecurity stemming from patriarchy and masculinity is even more highlighted during conflict. The importance of analysing masculinity in the causes and consequences of armed conflict can help one to realistically explain the causes of conflict, and can contribute towards designing peacekeeping and reconstruction policies which will succeed.¹²⁹

3.2 The interplay between war and masculinity, patriarchy, nation

Because nationalism is a product of social organization it can arise in different settings that the society organizes itself in. As such, nationalism can be mobilized in the name of liberation, while resting on the establishment of democracy.¹³⁰ Unfortunately nationalism is often mobilized in racist terms, where it is seen as manifested in “extremist form, on the one hand to patriarchalism (structuring gender relations hierarchically and emphasizing gender difference), on the other to ethnic and cultural differentiation and a reification of race.”¹³¹ Through this re-telling nationalism seeks to foster cohesion within a people, while excluding those who do not belong to the same group. As such, nationalism seeks to suppress differences

¹²⁵ Jack S. Kahn, ‘An Introduction to Masculinities’ (2009) 23

¹²⁶ Jerker Edström, Abhijit Das and Chris Dolan, ‘Introduction: Undressing Patriarchy and Masculinities to Re-politicise Gender’ (2014) 2-3

¹²⁷ Myra Marx Fereee, Judith Lorber and Beth B. Hess, ‘Revisioning Gender’ (2001) 373

¹²⁸ Susanne Buckley-Zistel and Magdalena Zolkos, *Gender in Transitional Justice* (Palgrave 2012) 8

¹²⁹ Mazurana, Raven-Roberts and Parpart (n 25) 29

¹³⁰ Cockburn and Zarkov (n 9) 11

¹³¹ Ibid 12

within the social group, while dominating the outsiders of the group.¹³² While nationalism of such a nature mostly takes place during warfare, it is through such an ideology that the majority of nations are born. These nations tend to be shaped by ideologies of nationalism, and patriarchy.¹³³ A recurring concept throughout conflict and nationalism, is masculinity. As stated by Cynthia Enloe, “nationalism typically has sprung from masculinized memory, masculinized humiliation and masculinized hope.”¹³⁴ Thus, the sources of nationalism are deemed masculine. At this point it can be concluded that nationalism arises at times of conflict, where warfare allows members of a nation to set boundaries between themselves and others through violence.

Because nationalism and conflict are closely connected, it is important to analyse the masculine character of conflict. The ways how masculinity and war interlink, can be analysed by looking at the composition of the military personnel during a conflict. It cannot be disputed that throughout history it has been predominantly men who participate in conflict.¹³⁵ While conflict is comprised of extensive levels of violence, Galtung’s statement which states “to say that 95% of direct violence is committed by men is probably an understatement”¹³⁶ holds true. It has become a norm in our society that conflict, is exclusively handled by men.¹³⁷ From this it follows that the social construction of masculinity finds its roots in violence, and war. The epitome of a soldier has become a paradigm of masculinity. I am fully aware that in all conflicts there are female soldiers as well; however the number is low, especially when compared to men. Millions of members of world’s armed forces are men. In most countries soldiers are also overwhelmingly men, while in cases where there are women soldiers, the commanders are men.¹³⁸ I would argue that the possible reason for the participation of predominantly males in warfare in the past was done for the mere reason of physical strength. It was easier for a male combatant to swing a sword, than it was for a female one. However, as technology developed so did warfare. Despite the fact that nowadays warfare is not performed solely through physical strength, the masculine trait still predominates.

¹³² Ibid

¹³³ Ibid 11-12

¹³⁴ Ibid 147

¹³⁵ Christensen and Rasmussen (n 117) 1

¹³⁶ Johan Galtung, *Peace by Peaceful means: Peace and Conflict, development and civilization* (Sage Publications, Inc. 1996) 41

¹³⁸ Cockburn and Zarkov (n 9) 33

Masculinity is reflected in warfare in the sense where “to be a real man is to be ready to fight, and ultimately to kill and to die.”¹³⁹ However, the question persists, to kill and die for what? This can be explained in terms of nationalism. The reasons for taking part in violence range from reasons of nationalism, patriotism, honour to self-defence and liberation.¹⁴⁰ In these scenarios nationalism elevates masculinity, to an extreme level where male combatants are ready to give their life for their nation. This traditional warfare regime is identified as one that generates a hegemonic form of masculinity, which is highly oppressive towards women, but also towards men who do not fit into the masculine criteria. This form of masculinity establishes opposite worlds for men and women, during and after the conflict.¹⁴¹ It can be implied that these opposing worlds affect men and women in negative ways both during and after the conflict, hence affecting the work of transitional justice measures.

Male participation in war has become so crucial that it represents a necessary component of citizenship, ethnicity and communal belonging.¹⁴² By attaining this level of belonging through “unhealthy” levels of masculinity, men seek to demonstrate their newly attained power. By exercising this power men seek to exercise their dominance in the society.¹⁴³ While in the pre-conflict period, this is usually done privately and within the household, the period during conflict expands the arena of masculine dominance to the public. Male dominance towards the society is primarily done through conflict and gender.¹⁴⁴ The reasoning behind masculine dominance has to do with protecting the nation and ethnicity. Going back to Anderson’s definition of a nation, he asserts that it is “fraternity that makes it possible...for many millions of people not so much to kill, as willingly to die” for their communities.¹⁴⁵ By referring to the nation as a “fraternity,” he acknowledges that it is men who are predominantly involved in conflicts in the name of protecting their nation. This fraternity exercises domination towards those who do not apply to the conditions of masculinity, which are mostly women and a number of men.

It should be noted that masculine dominance during and after a certain conflict has patriarchal elements as well. This can be argued for the mere reason that nowadays patriarchy is expressed through social organization. As nationalism is all about social organization and

¹³⁹ Cockburn (n 65) 10

¹⁴⁰ Ibid 9

¹⁴¹ Cockburn and Zarkov (n 9) 13

¹⁴² Christensen and Rasmussen (n 117) 432

¹⁴³ Christensen and Rasmussen (n 117) 190

¹⁴⁴ Judy El-Bushra and Cecile Mukarubuga, ‘Women, War and Transition’ (1995) 16

¹⁴⁵ Anderson (n 119) 7

group identity, masculinity which derives its dominance from nationalism can also be legitimized through patriarchy. To support this Cynthia Cockburn states that conflict can lead to the re-entrenching of “patriarchal familial ideology, deepening the differentiation of men and women, masculinity and femininity, preparing men to fight and women to support them in doing so.”¹⁴⁶ The next section will provide an analysis of the influence of such factors on women during conflict

3.3 Where are women located at times of war?

While men take up such an important and large space in the field of war, one might ask where are women located during these times? Even though it is mostly men who fight the official war, women play a crucial role as well, which usually goes unrecognized. For instance, it is known that women help shelter and feed those in need, while also caring for the sick, the elders and the children.¹⁴⁷ Despite their important roles, during conflict women take up an invisible and secondary role, and are reduced only for their reproductive capabilities, while their agency is not recognized.

The following section will provide two dimensions of gendered nationalism. In both of these dimensions women are valued, but also attacked for their reproductive capabilities. The first dimension sees women solely as reproducers of the nation. While the second dimension attacks women because they are seen as the exemplification of group differences. Both of these dimensions violate the woman’s body and reproductive rights in the name of the nation.

In the nationalistic periods and conflict women are reminded that by biology and by tradition they are the keepers of the home, and that they should teach children to fight for their homeland. It is interesting to note that this homeland is most often represented as “motherland.” Men by physique and tradition are there to protect women and children, as well as “the motherland.” Through this logic, women should be ready to sacrifice their husbands and sons, while men are expected to sacrifice their lives.¹⁴⁸ When discussing gendered nationalism, Yuval-Davis and Anthias introduce the first dimension which includes seeing women as biological reproducers of group members. This view limits women to their role and duty to bear sons who will fight for the Motherland. This is done by “including restriction of contraceptive knowledge and techniques, denial of access to abortions, and

¹⁴⁶ Cockburn (n 65) 8

¹⁴⁷ Cockburn and Zarkov (n 9) 74

¹⁴⁸ Cockburn (n 65) 8

provision of material rewards for bearing children.”¹⁴⁹ As such, women who resist the role of “reproducers of the nation” are seen as selfish, and unpatriotic. Moreover, women who have abortions are seen as traitors, while abortion is presented as a threat to the nation.¹⁵⁰ It is clear that a double standard is put on women, who are glorified as reproducers of the nation in their role of mothers, but can also be seen as potential traitors of the nation, who pose a threat to its existence. In this case it is also important to turn the reader’s attention towards the human rights violations that women experience during conflict. The more concerning fact is that in the name of the nation, these violations are seen as acceptable, while ignoring the woman’s personhood. Thus, gendered nationalism is crucial in shaping state identity by depicting the bodies of women as the biological and cultural reproducers of the nation.¹⁵¹

In most republics of former Yugoslavia, the post-communist agenda was filled with strong anti-abortion movements which were supported by the church and leading politicians.¹⁵² In Slovenia during the process of constitution drafting, representatives of a coalition stated that “women should not have the right to abort future defenders of the nation.”¹⁵³ On the other hand, Croatia saw a political consensus in restricting abortion for preserving the nation. The “fusion of masculinism, nationalism, and catholic conservatism was also demonstrated just before the republic's independence, when the slogan 'the foetus is a Croat too!' could be seen on posters and graffiti throughout Croatia.”¹⁵⁴ The link between gender and nation is clearly identifiable in these scenarios, but also the link between nationalism and human rights violations. It is visible that nationalistic ideals elevate “the masculine soldier” to levels where the violation of women’s rights is seen as something permissible.

In addition, another dimension of gendered nationalism sees women as signifiers of group differences, but with a limited importance. In this case the “Motherland” is seen as woman’s body and as such is in danger of violation by “foreign” males. Women are seen as the property of the nation, who require to be defended and protected by their sons.¹⁵⁵ This dimension takes on a nationalistic character through war time rape. This is best exemplified by the statement, “nation as woman expresses a spatial, embodied femaleness; the lands

¹⁴⁹ Lorentzen and Turpin (n 115) 43

¹⁵⁰ Julie Mostov, ‘Our Women/ Their Women; Symbolic Boundaries, Territorial Markers, and Violence in the Balkans’ (1995) 518

¹⁵¹ Annika Björkdahl, ‘A Gender-Just Peace? Exploring the Post-Dayton Peace Process in Bosnia’ (2012) 289

¹⁵² Lorentzen and Turpin (n 115) 235

¹⁵³ Spyros A. Sofos, ‘Inter-Ethnic Violence and Gendered Constructions of Ethnicity in Former Yugoslavia’ (1996) 5

¹⁵⁴ Ibid 6

¹⁵⁵ Mostov (n 150) 516

fecundity, upon which the people depend, must be protected by defending the body-nation's boundaries against invasion and violation. But nation as woman is also a temporal metaphor; the rape of the body-nation not only violates frontiers but disrupts - by planting alien seed or destroying reproductive viability-the maintenance of the community through time." She adds that in this "patriarchal metaphor is the tacit agreement that men who cannot defend their woman-nation against rape have lost their 'claim' to that body that land."¹⁵⁶ From this follows that wartime rape is seen as a method of conquest. The territory of the enemy is occupied by raping their women. Female bodies are seen as occupied territory, which signal the impotency of their men. These men failed to protect their women, are thought to be defeated as they have failed to protect their borders.¹⁵⁷ As such through the act of rape, the rapist can defeat the male enemy as well, conquer the other nation's territory and advance his own nation.

The message carried to the men of the other nation through raping their women is intended to attack their masculinity. As these men were not able to protect their women they are seen as incompetent and not masculine enough. Furthermore, another tactic of humiliating the masculinity of enemy men is done by "branding" the raped women's bodies with nationalistic symbols. This has been a highly used tactic in the Balkan wars.¹⁵⁸ It is known that rape is viewed as a taboo topic and followed with a lot of shame and stigma. For this reason, it can only be imagined the shame that these women feel after they have not only been raped, but also have the nationalistic symbols of their enemy permanently inscribed on their bodies. It can also be assumed that this is done in order to disrupt family relations. As such, it is important to look at sexual violence as a form of communication as well and not only as sexual violence.

War time rape can depict the ways the woman's ethnicity is deemed invisible. According to Handrahan ethnicity is considered patriarchal and masculine, while rendering the woman's ethnicity irrelevant and invisible. Ethnicity is patriarchal in the sense that it allows a man to produce children of his ethnicity, even if he rapes a woman of another ethnicity. Because the woman does not have an ethnic identity, the children will belong to the ethnicity of the

¹⁵⁶ Ibid 523

¹⁵⁷ Ibid 524

¹⁵⁸ Cockburn (n 65) 12

male.¹⁵⁹ This can be best exemplified with the rape of Bosnian Muslim women by Serb soldiers, which will be explained in the next sections of this chapter.

Throughout wartime rape, and war in general one can see that women are used only for achieving male defined ends, a clear characteristic of a patriarchal ideology. In these cases women are denied agency and are seen as instruments for male defined goals. During conflict these goals usually include nationalistic ideals where women are invisible, valued only for their reproductive and sexual body capacities which “become significant markers of male-defined identity.” During times of conflict the female becomes dependent on male definitions of appropriate behaviour and their protection.¹⁶⁰

3.4 The war in the Balkans – Motherhood and Nationalism

While offering his account on the war in Bosnia and Herzegovina, the Serb Military leader Ratko Mladic stated that the Bosnian Serbs were involved in the war because of their duty to protect their women and children, and that the conflict was motivated by love and honour.¹⁶¹ This sentence reflects the way the war in the Balkans was manipulated through gendered terms. A war driven by and between men, stimulated by nationalistic discourses is portrayed as an expression of love for their motherland, and for their women. Even though portrayed as a war where women are respected, the dominant representation of women during this war has seen them reduced to biological reproducers of the nation without any individual value. Throughout the events that led to the conflict, and during the conflict, nationalistic ideologies put the burden and a high importance on motherhood, seen as the saviour of the nation. This period saw notions of gender and family manipulated by nationalists.¹⁶²

If one is to start from the statement that “for women and girls, the impacts of war are compounded by pre-existing gender inequalities and discrimination”¹⁶³ then it could be concluded that the situation that women find themselves in during war is the by-product of the pre-war period. As such, the marginalization of women can be traced back to the patriarchal cultures in the countries of former Yugoslavia even before the war. The formal relations in these societies were based exclusively upon male members of the community. For

¹⁵⁹ Ibid 437-438

¹⁶⁰ Lori Handrahan, ‘Conflict, Gender, Ethnicity and Post-Conflict Reconstruction’ (2004) 437

¹⁶¹ Sofos (n 153) 1

¹⁶² Cockburn and Zarkov (n 9) 75

¹⁶³ Coomaraswamy (n 116) 68

a matter of fact, it was observed that “enduring social units are formed through the male descent line, and women are exchanged among these units to procreate future generations of males, leaving no enduring marks of their own existence in terms of the formal structure.”¹⁶⁴ From this it can be observed that women were seen as insignificant members of the nation, whose only purpose was to contribute in the continuation of the patriline. This, as it shall be proven throughout the chapter, was heightened at times of conflict, where women were subdued to a secondary, almost invisible role.

However, at the time of Socialist Yugoslavia it can be said that women held equal rights with men and they were seen as important contributors to the nation. In this period “the role accorded to women in socialist Yugoslavia was to contribute to the building of socialism through the family, work, and political activity.”¹⁶⁵ Even though, on a public platform the woman was empowered, in the private sphere patriarchal ideologies resisted the new values. After the breakup of Socialist Yugoslavia, values of women empowerment were reversed to traditional ones. The patriarchal ideology expanded from the private to the public realm, and the only official role a woman had to play was in regards to domestic work and motherhood. The patriarchal power and ideology that Yugoslav socialism failed to shift in the 60s and 70s, contributed to “the rise of nationalism and militarism, and to the legitimation of violence, in the eighties and nineties.”¹⁶⁶

The gendered dimension of seeing women as the reproducers of the nation became visible throughout the former republic of Yugoslavia. A woman’s task was no longer to contribute through work, but by reproducing the nation through her role as a mother.¹⁶⁷ Nationalistic ideals were further highlighted when Slobodan Milosevic came to power in 1987, and developed an openly nationalist programme. The primary reason for the rise in nationalism is the installation of fear among the Serb population by those in power.¹⁶⁸

The first instance of installing fear among the population was by losing the territory of Kosovo to Albanians who formed the majority there. Serbs consider Kosovo a very important landmark of their history, and the centre of the medieval Empire.¹⁶⁹ In this period Kosovo-Albanians were experiencing a very high birth-rate compared to the low birth rate among the

¹⁶⁴ Ibid 15

¹⁶⁵ Wendy Bracewell, ‘Women, Motherhood, and Contemporary Serbian Nationalism’ (1996) 25

¹⁶⁶ Cockburn and Zarkov (n 9) 69

¹⁶⁷ Bracewell (n 165)

¹⁶⁸ Ibid 26

¹⁶⁹ Ibid

Serb population. The high birth-rate among the Kosovo-Albanians was seen as a “deliberately conceived plan to squeeze the Serbs out of Kosovo.”¹⁷⁰ These scenarios portrayed Kosovar men as primitive men who were forcing their women to bear children in order to create an “ethnically pure” Kosovo. Kosovar women on the other hand were portrayed as victims of a patriarchal family, who were deemed as “machines of reproduction.”¹⁷¹ It is interesting to note that what is to follow is a certain change of attitudes where Serbian women were to be seen as “machines of reproduction” by their men, because of nationalistic ideologies. Serbian women who were once seen as emancipated women because they did not subdue to patriarchy were now blamed for the low birth rate. The blame was put on Serbian women by the “Serb fraternity”, with the argument that communism had made women believe that they could be equal to men, thus they fail to reproduce the nation out of selfishness.¹⁷² One can clearly see the pattern of gendered nationalism here, where on one hand women are praised for their reproductive capabilities, but they are also seen as a threat to the nation if they do not subdue to their “reproductive duties.”

In addition, Serb mass media exploited cases of rape of Serbian women by Albanian men, as one of the threats to the “Albanization” of Kosovo. During this narrative of rape against Serbian women, the women were represented as “Serbian mothers or wives, and so prescribed roles of actual or potential reproducers of the nation, as instrumental to the preservation of the patriline.” From this, one can see the interplay between motherhood, patriarchy and the nation. Women are only valuable because they are seen as reproducers of the nation and not individuals. For this reason the interest of the public was related to the rape of the nation and not the individual. As such, the act of rape was seen as ethnic violence, not gender violence. It is interesting to note that the Serb mass media portrayed Albanian men as lacking masculinity, because they were considered impotent, unable to succeed in raping the Serb women, and nation.¹⁷³ It is here that patriarchal and masculine metaphors are included since even though it may seem that the masculine Serb has failed to protect the woman/nation, the impotent Albanian did not achieve to do so. As such, masculinity is regained and Serbs can reclaim their women/nation. Going back to the imagined nation, it can be argued that the nation is imagined as a male community exclusively, where women despite their contribution are deemed invisible.

¹⁷⁰ Bracewell (n 165)26

¹⁷¹ Ibid, 27

¹⁷³ Sofos (n 153) 10

In 1991 when the war broke out, nationalistic ideals elevated motherhood to extreme levels. This is best demonstrated with the statement of Rada Trajkovic, member of the presidency who commented the armed clashes in Slovenia by stating, "For every Serbian soldier dead in battle in Slovenia, Serbian mothers must bear 100 more soldiers."¹⁷⁴ Women were faced with a double burden where if they refused to bear children they would be seen at best failures, or at worst traitors of the nation.¹⁷⁵ It is visible that the duty of women evolved from having to bear children, to having to bear fighters. This view was supported by spokesmen from all sides, as they worried that with the low birth rate there will not be enough soldiers to protect the nation.¹⁷⁶ One can see the first dimension of gendered nationalism at play, where Serbian women were limited to their role to bear sons who will fight for the "Motherland."

It is evident that Serbia witnessed a reversal of roles from the socialist ones where gender equality was valued, to traditionalistic patriarchal which were further heightened with the increase of nationalism. With the war approaching, women were expected to sacrifice their own interests, while having to bear children in order to fulfil their national duties. These children would be considered as potential soldiers for saving the nation, while the mother was expected to be heroic enough to sacrifice her children for the same cause. It should be highlighted that in the transformation from socialism to nationalism, the individual identity and agency of women was acknowledged only if they fulfilled their duty towards a collective aim. While socialism did not use patriarchal ideals in such a direct way, during the time of nationalism and conflict women were transformed into "machines of reproduction" for the mere aim of saving the nation.

3.5 Wartime rape and the interplay between masculinity and ethnicity

Throughout the nationalistic propaganda developed by the Milosevic regime, the Serbian identity was described solely in masculinist terms. The masculinist definition of the nation found its depiction from Serbian folk culture, while those who did not conform to it were seen as unmanly.¹⁷⁷ Identifying a nation in masculine terms only, leads one to conclude that the feminine aspect is considered invisible. Masculinity was a highly present concept in cases of rape. It is known that at times of war sexual violence is notorious.¹⁷⁸ In the remainder of

¹⁷⁴ Ibid

¹⁷⁵ Ibid 29

¹⁷⁶ Ibid

¹⁷⁷ Sofos (n 153) 8

¹⁷⁸ Handrahan (n 160) 437

this chapter I will argue that through sexual violence, men seek to demonstrate their masculinity and dominance.

During the Bosnian war a large number of women, but also men were raped by Serb soldiers. These rapes were seen as one of the most gruesome acts in the history of warfare. Allen argues that “not even the Nazis managed to invent a way to turn the biological process of gestation into a weapon of annihilation.”¹⁷⁹ The rapes of Bosnian women are not only seen as a way of exerting male-dominance over female victims, but also the intention to facilitate ethnic cleansing.¹⁸⁰ The ICTY adjudicated that the rapes of Bosnian women constituted a crime against humanity, and torture under the Geneva Conventions.¹⁸¹ For the sake of being correct, it is necessary to mention that rapes were committed by the Bosnian Muslim military forces as well. However, these rapes “were classified as ‘sporadic’ compared to the genocide of the Serbs, and as ‘spontaneous’ rather than intentional as was the case of the Serbian rapes.”¹⁸²

Wartime rape is seen as an issue of national warfare, where women are raped “primarily because of her national, religious or ethnic identity and only secondarily because of her sexual features.”¹⁸³ As such it is necessary to analyse wartime rape in other terms, besides sexual ones. As wartime rape serves the purpose of destructing the other nation, it also subscribes notions of inferiority to it.¹⁸⁴

In order to better understand the factors which led to the rape of Bosnian women, it is important to analyse it from the aspect of ethnicity. For this reason, the ethnic division in Bosnia and Herzegovina played an important role in the nationalistic claims which led to the rapes. Bosnian Muslims, were seen by Serbian nationalist ideologies as alien, and were regarded as Turks who conquered the Serbian homeland. As such, one of the aims they hoped to achieve out of the conflict was to remedy historical injustices¹⁸⁵ because the Turk foreigners usurped the Serb land and nation. This was portrayed in Serb folk songs which portrayed the expulsion of Bosnian Muslims, by targeting their women. By stating “Turkish

¹⁷⁹ Lene Hansen, ‘Gender, Nation, Rape: Bosnia and the Construction of Security’ (2000) 63

¹⁸⁰ Sofos (n 153) 10

¹⁸¹ Cockburn and Zarkov (n 9) 65

¹⁸² Hansen (n 179)

¹⁸³ Ibid 59

¹⁸⁴ Ibid

¹⁸⁵ Sofos (n 153) 13

daughter our monks will soon baptize you”¹⁸⁶ the folk songs point to the fact that the “Turkish” nation will be eliminated by targeting and converting their women. In times of conflict folk songs such as these can have a tremendous impact, as they work towards dividing people even more. As stated by Cynthia Cockburn “they stoke the fires of national patriotism against a rival nation, point a finger at ‘the enemy within’, or deepen the sense of ethnic belonging in opposition to some ‘other’, from whom ‘we’ are different and by whom our culture or our religion, our very existence, are threatened.”¹⁸⁷ To achieve their end goal, the Serbian soldiers targeted women, not only because women are seen as the “weaker sex” but also because through the act of rape they could achieve a number of goals.

It is reported that the rape of Bosnian women had two aims: to facilitate the process of “ethnic cleansing” and to inhabit the nation of Bosnian Muslims by impregnating their women.¹⁸⁸ I would like to turn the attention to the patriarchy of ethnicity which is clear in this case. Namely, “because of the patriarchy of ethnicity, a man can produce children that are ethnically his by raping, any woman, regardless of the latter’s ethnic distinction, because in fact she possesses no separate identity, neither individually nor collectively.”¹⁸⁹ Ethnicity takes on discriminatory masculine ideals during the war, which can be presented as patriarchal as well since they include male dominance. This dominance is portrayed through rape. Handrahan notes that “if ethnicity is patriarchal, male honour and national identity are located within the female, as women’s bodies are used as ‘vehicles’ for the symbolic depiction of political purpose.”¹⁹⁰ During war rape, men mostly target women since they are valued for their reproductive and sexual capacities, which at the same time are considered important parts of the male-defined ethnic identity. As such, the ethnic purity of women is targeted because this way the masculinity and ethnicity of the whole nation is targeted as well. Ethnicity is considered paternal, while the ethnicity of a woman is irrelevant.¹⁹¹

During the numerous rapes that occurred in the concentration camps in Bosnia and Herzegovina, it is reported that the raped Bosnian-Muslim women were told to “go and deliver fighting Serbs.”¹⁹² Through this statement it can be assumed that the raped Bosnian woman does not have an ethnicity, and the child will be of a Serbian ethnicity. Furthermore,

¹⁸⁶ Ibid

¹⁸⁷ Cockburn (n 65) 8

¹⁸⁸ Ibid 14

¹⁸⁹ Handrahan (n 160) 438

¹⁹⁰ Handrahan (n 160) (See also Yuval-Davis, 1997; Elshtain 1994 and Coomaraswamy, 1999)

¹⁹¹ Handrahan (n 160)

¹⁹² Sofos (n 153) 14

it reinforces the notion that women are “reproductive machines” who will save the nation by bearing fighters. The raped women were detained until it was too late for the pregnancy to be terminated. It follows that Serbs saw the reproduction of the nation through a patriarchal lens, where the ethnicity of women is invisible, while they are only instruments for achieving their end goals. By forcing women to keep their children they would contaminate their nation. This would be done biologically and culturally, where the children “would be deemed to be alien to the national community,” and psychologically, as this would “disrupt the relations between family members.”¹⁹³ A woman who has been raped is seen as devalued property, and she signals defeat for the man who failed to protect her.¹⁹⁴ Furthermore, women who are impregnated through rape are represented “as a passive ‘national’ container of a child imagined to be the future bearer of the rapist’s nationality. In this way, an individual rape can be read for its collective, national significance through the complex sign of the child’s imagined future identity as an embodiment of the enemy state.”¹⁹⁵

Another aim of wartime rape was to humiliate the males of the other ethnicity. Bosnian-Muslim men failed to protect and lost the claim to their women. The large scale rapes of Bosnian women by Serb soldiers has been perceived as the attempt of the Serb soldiers to depict the whole Bosnian nation as humiliated, weak, feminine and inferior.¹⁹⁶ While it is certain that through rape Serbs exerted their dominance and humiliated both Bosnian-Muslim men and women, the end goal was ethnic cleansing. Namely, by raping Bosnian-Muslim women, Serbs could remedy historical injustices, since the “land and history can be and are conquered over women’s bodies.”¹⁹⁷ This leads to the dimension of gendered nationalism which was presented earlier in the chapter which sees women as signifiers of group differences. Namely “the rape of the body/nation not only violates frontiers but disrupts, by planting alien seed or destroying reproductive viability-the maintenance of the community through time.”¹⁹⁸ Finally, while establishing the scenario of rape and nation, one should be careful not to omit the experience and personhood of women from this scenario. As such, “reading the rapes through national collective security lenses risked removing the rapes from

¹⁹³ Sofos (n 153) 15

¹⁹⁴ Mostov (n 150) 524

¹⁹⁵ Hansen (n 179) 60-61

¹⁹⁶ Hansen (n 179) 56

¹⁹⁷ Sofos (n 153) 15

¹⁹⁸ Lorentzen and Turpin (n 115) 44

the women themselves; in the collective, national-security construction ‘individuals cease to exist’.”¹⁹⁹

Conclusion

It cannot be disputed that during war concepts of nationalism, ethnicity, and patriarchy interlink through masculinity, in order to let men achieve their dominance over women. However, this dominance is not only exerted over women, but it is done through raping women in order to humiliate men and the whole other nation. During war, because of nationalistic ideals women take on secondary roles and are seen merely as “vessels” with which male members of a community navigate to achieve their end-goals.

4. Transitional justice and gender-where are women located in the field of transitional justice?

Transitional justice and peacebuilding efforts rest on democratic values and human rights. At this point it is understandable that TJ processes are seen as efforts of saving a community, helping it come to grips with the violent past and assisting in a better transition to the future. However, the international community as the implementer of TJ, often fails to take into account local practices and understandings of peace and justice, and imposes a “one size fits all” model of TJ. Such models result in an illiberal and undemocratic model of peace.²⁰⁰ During TJ and peacebuilding efforts, through the interplay between the international and local, gender becomes an arena where power identities reaffirm post-conflict divisions in a continuum of the exclusions of the pre-conflict period. Namely, through an interaction between the international peacebuilding discourse and nationalism, culture and religion, gender identities are re-constructed.²⁰¹ Peacebuilding and transitional justice efforts become an arena of power relations where the lack of engagement and empowerment of local agents results in a limited success of the liberal peacebuilding project.²⁰² Even though women make up half of the world’s population, they have been entirely absent from transitional justice processes, and their role has been left underexplored despite its importance.²⁰³ Beyond analysing some developments towards the inclusion of women within TJ, the purpose of this chapter is to analyse whether power relations and masculinity exercised by the local and international community, impact the exclusion of women from transitional justice processes.

¹⁹⁹ Hansen (n 179) 64

²⁰⁰ Bjorkdahl (n 151) 289

²⁰¹ Ibid

²⁰² Bjorkdahl and Selimovic (n 7) 2

²⁰³ Alexandra Zetes, ‘Beyond Passive Victimhood: The Narrative and Reality of Women in Transitional Justice’ (2016) 1293

Throughout transitional justice processes women are excluded from the public sphere as this is seen as a realm of power and authority, appropriate only for men. This stems from the fact that women are marginalized from taking on public positions, as the private sphere is deemed as the appropriate domain for them. Regarding peacebuilding efforts and TJ processes as a public domain activity leads to the exclusion of women in these processes and their limitations to influence the construction of peace.²⁰⁴ As seen in the previous chapters, warfare is an arena of exhibiting power and authority, predominantly done by men. This flows in a continuum in the post-conflict period as well. The post-conflict arena is also characterized with masculine and militarized values, shared between the local and international community.

From the beginnings of transitional justice, women were excluded because of the male bias in forming the newly established justice seeking institutions.²⁰⁵ This bias excludes women since they cannot contribute in reconstructing the society, as this is a public domain and as such should be governed exclusively by men. The lack of engagement of women in the post-conflict reconstruction has many implications not only for women but for the whole society. It is a given that conflict affects men and women in different ways, which results in different perspectives after the conflict as well. If used in the proper democratic way, these perspectives could be utilized for the benefit of the society. In addition, as conflict changes the demographic make-up of the society, it produces effects on the public and private spheres.²⁰⁶ The period after the conflict represents an opportunity for the reversal of traditional gender roles. However, because of patriarchal and masculine attitudes this is not always the case. In some cases the conflict, coupled with the masculinities of both the local and the international community might reinforce traditional gender roles, leading to a peace which is far from gender just. It should be highlighted that a gender just peace is understood not as the reconstruction of the pre-war situation, but a form of peace which provides for social justice and equality, and which recognizes women's agency as well as their reproductive roles. A gender just peace contributes to a shift in the provision of specific rights related to women's gender roles, a transformation in gender relations as well as a redefinition of gendered hierarchies.²⁰⁷ On the other hand, gendered hierarchies which are embedded in

²⁰⁴ Bjorkdahl (n 151) 290

²⁰⁵ Buckley-Zistel and Zolkos (n 128) 5

²⁰⁶ 'Addressing Gender in Transitional Justice Mechanisms' (Democratic Progress Institute 2015) 14-15

²⁰⁷ Bjorkdahl and Selimovic (n 202) 4

the peacebuilding project tend to create a peace gap which is often referred to as a gendered gap.²⁰⁸

Thus, if a society was to achieve gender-just peace it would lead to the reversal of traditional gender roles and transformation of the society into one which is not discriminatory towards women. A crucial factor in achieving a gender just peace is recognizing women for their agency and the contribution they can generate for the whole community. From this follows that agency is understood as the “human capacity to act, a capacity that is not exercised in a vacuum but a social world in which structure shapes opportunities and resources available in a constant interplay of practices and discourses.”²⁰⁹ Agency should not be understood only as political action, but encompasses what a person does as they go about their daily lives.²¹⁰ A closer look into transitional justice raises questions concerning the quality of peace it hopes to achieve. Mainstream transitional justice and peacebuilding practices have tended to re-entrench gendered hierarchies, and have ignored women.²¹¹ As a result of this, the resulting peace was fragile, with gendered peace gaps. It is a fact that women have been almost entirely excluded from most peace negotiations and transitional justice processes. As it shall be seen in the following paragraphs, even with the developments in the attempt to include women in TJ processes, women still face difficulties to have their voice heard. Male dominance in transitional justice has led to women being seen solely as victims, specifically victims of sexual violence. Through this view women’s agency is deemed as unimportant and invisible.

4.1 Developments in including women in transitional justice

The role of women both during and after a conflict even though unrecognized, is of a high importance. There are certain cases where the role women in peacebuilding efforts was recognized, however such cases are rare. The UN Women 2015 study notes that “women have always participated in peace negotiations and peacebuilding, but always at the informal level and rarely visible to the formal peacemakers and keepers of peace.”²¹² Despite the difficulties in having their agency recognized, there are several cases where women made an “officially recognized” impact in TJ processes. In Liberia, women surrounded buildings in an attempt to force the leaders to stay in the room and resolve the conflict, in Northern Ireland

²⁰⁸ Bjorkdahl (n 151) 287

²⁰⁹ Bjorkdahl and Selimovic (n 202) 10

²¹⁰ Ibid 11

²¹¹ Ibid 5

²¹² Zetes (n 203) 1302

they elected themselves as a third force in the peace efforts, in Argentina the Mothers of the Plaza de Mayo demanded that truth and justice be part of any peace process, while in Serbia Women in Black protested while calling for peace.²¹³ All, of these initiatives are highly important and have generated change; however they are outliers as on a formal level only a very low percentage of women are involved in peace building processes.

The field of TJ has excluded feminist analyses while gender perspectives remain rare to non-existent. The year of 2000 and 2001 was characterized with a number of UN initiatives which acknowledged the significance of gender in conflict and post-conflict situations. These were among the first initiatives to include gender in planning and implementing international peacekeeping operations. The inclusion of gender in this area came as a result of years of activism by women who have sought for this to happen. These women argued that war in itself is gendered and peacekeeping needed to be gender conscious. One of the first important developments in mainstreaming gender into peacekeeping operations is established in The Beijing Declaration and Platform for Action in 1995. The section on “Women and Armed Conflict” called for a greater involvement of women in decision-making in the post-conflict period, as well as in international peacekeeping operations. In addition, after the Economic and Social Council Resolution 1996/310 gender mainstreaming became a policy of the UN, where a commitment was made to achieve gender balance in all professional posts of UN Bodies including peacekeeping operations.²¹⁴

One of the most important developments remains the passing of the UN Security Council Resolution 1325 in 2000.²¹⁵ This resolution acknowledges the disproportionate impact of conflict on women, and reaffirms the pivotal role women play in conflict prevention and resolution as well as peacebuilding. It highlights “the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution.”²¹⁶ UNSCR 1325 focuses specifically on three areas, where it urges states to “(i) increase the number of women in decision-making around issues of peace-building and conflict transformation; (ii) protect women and girls in conflict and post-conflict situations, especially from gender-based violence; and (iii) and adopt a gender perspective on peace-

²¹³ Coomaraswamy (n 116) 40

²¹⁴ Cockburn and Zarkov (n 9) 41-45

²¹⁵ Zetes (n 203) 1295

²¹⁶ UNSC, ‘Resolution 1325’ (31 October 2000) 1

making, peace keeping and peace-building.”²¹⁷ These areas are of a profound importance not only for women, but for the society as a whole as if achieved they would guarantee a lasting and gender-just peace. Furthermore, it can be observed that by giving women the space in decision-making, the first point of this resolution seeks to move beyond the over identification of women as victims. This area would acknowledge women for their agency. On the other hand, including a gender perspective in the peace-making process is important since it can enable the society to see how gendered hierarchies shaped the conflict, and post-conflict setting, while adopting a gender-just peace as the end goal.

The adoption of the UNSCR 1325 resolution undoubtedly contributed towards the recognition of the fact that women should be included in transitional justice processes. However, the mere acknowledgment and not the implementation of this is not enough. Women make up half of the world’s population so it is only fair that they participate in making the decisions which affect them equally as men. Despite the importance, the impact of the resolution is diminished if these aims are left only in theory. Unfortunately, in reality women still remain underrepresented in transitional justice processes.²¹⁸ Fifteen years after the adoption of the resolution 1325, the UN Secretary General requested a global study on the developments of the implementation of this resolution. A study led by Coomaraswamy, to evaluate the implementation of UNSCR 1325 found limited progress as far as the question of gender and transitional justice goes. The study found that after the adoption of UNSCR 1325 there were several general recommendations and subsequent resolutions adopted on women in conflict and post-conflict situations. One of the important subsequent resolutions is the UNSCR 1820 adopted in 2008. This resolution condemns the use of sexual violence as a tool of war, and states that it constitutes a crime against humanity.²¹⁹

Despite the recognition on the crimes that women are subject to at times of war, and the fact that they are important agents in peacebuilding, the number of peace agreements which reference women increased from 11% to 27%.²²⁰ Even though these results are presented as positive developments, I would claim that they represent unwillingness towards change. This unwillingness to change can be understood from the fact that historically it was men who dealt with peace agreements and peace building. Thus, as the figures of women references

²¹⁷ Monica McWilliams and Avila Kilmurray, ‘From the Global to the Local: Grounding UNSCR 1325 on Women, Peace and Security in Post Conflict Policy’ (2015) 2-3

²¹⁸ Zetes (n 203) 1296

²¹⁹ UNSCR 1820

²²⁰ Coomaraswamy (n 116) 13-14

within the peace agreements point out, there is still some sort of reluctance to include women in these processes. Furthermore, the fact that it took a considerable amount of time to take the initiative to include women points one to the bigger picture, one where women are discriminated and seen as unimportant on a daily basis and in all areas of life, which is also reflected in TJ.

The UN Women study also revealed that at the practical level the results seem diminished. Namely, there have only been a few prosecutions regarding sexual violence.²²¹ Thus even though women are mostly seen as victims of sexual violence, not a lot has been done to prosecute those responsible for it. In addition, only nine per cent of negotiators in peace processes are women, while in the UN military missions only three per cent of staff are women.²²² One can see that the efforts to include women in peace-making negotiations are left only on paper and not included in reality. Furthermore, “despite a great deal of effort by the international community to encourage Member States to have inclusive processes to formulate national action plans on women, peace and security, only 54 countries have formulated such action plans.”²²³ It can be understood that the reality is far from what the resolution aimed to achieve. It is evident that even more than a decade after the adoption of the UN Resolution 1325 there is still a striking absence of women from peace building initiatives, and transitional justice processes. This absence reveals a “troubling gap between the aspirations of countless global and regional commitments and the reality of peace processes.”²²⁴ The gap between what was hoped to be achieved and the reality is concerning as it reveals that the field of transitional justice continues to be gender-blind. Women are still absent from transitional justice mechanisms, which casts doubts on how neutral transitional justice really is, and what its real goals are. The lack of local understandings while implementing TJ processes has been highlighted by the U.N. Under-Secretary General and Executive Director of U.N. Women, who stated “we struggle to bridge the declared intent of international policymaking and the reality of domestic action in the many corners of the world where Resolution 1325 is most needed.”²²⁵ Even though the resolution intended to recognize women for their agency, the rhetoric regarding the proposed gender perspective “focuses more on the victimhood and protection aspects of including women in peace

²²¹ McWilliams and Kilmurray (n 217) 36

²²² Coomaraswamy (n 116) 14

²²³ Ibid

²²⁴ McWilliams and Killmurrat (n 217) 36

²²⁵ Zetes (n 203) 1302

processes, as opposed to the efficacy and value of involving women for the sake of international justice as a whole.”²²⁶ Focusing only on the victimhood of women and removing their agency is a re-occurrence throughout this resolution as well as other UN Documents. An analysis of the Secretary General’s Reports on Resolution 1325 revealed that women are represented as vulnerable and without any agency, leading to a sub-ordination by the decision makers. As such, the masculinist language found in UN peacekeeping documents leads to a perpetuation of gender roles which reinforce gender inequalities and hierarchies.²²⁷ Furthermore, it is interesting to note that the view of seeing women for their reproductive capabilities and as mothers is perpetuated in UN documents as well. Namely, an analysis of these documents found that women are almost always referred to as “women and children.”²²⁸ This term defines women by their biology and sees them as vulnerable mothers. It is evident that the lack of women’s personhood is continued in transitional justice efforts as well, where they are seen only for their motherhood.

4.2 Potential reasons for the exclusion of women from transitional justice

Before analysing the potential reasons for the exclusion of women within transitional justice, it is important to note that this exclusion bears several consequences. While it is a given that the exclusion of women from transitional justice processes is discriminatory and undemocratic, there are also consequences which affect women directly. Usually after the end of conflict the society is ravaged with high poverty. As a high number of women become widows and the main providers of the household, they may fall even deeper into poverty.²²⁹ Thus, it is the moral obligation of the whole community both local and international, to tend to the needs of all the members of the society while not excluding anyone.

The common explanation for the lack of gender inclusion within transitional justice processes is explained by a lack of political will.²³⁰ However, the motives behind the lack of political will should be analysed more thoroughly, as they can point out to the power relations which govern the whole field of TJ. Throughout this work it has been emphasized that the nature of conflict has historically been characterized as a male dominated space. As such, through masculinity conflict tends to exacerbate gender norms and highlight stereotypical gender

²²⁶ Ibid 1304

²²⁷ Nadine Puechguirbal, ‘Discourses on Gender, Patriarchy and Resolution 1325: A Textual Analysis of UN Documents’ (2010) 172-173

²²⁸ Ibid

²²⁹ Cockburn (n 65) 16

²³⁰ Bjorkdahl and Selimovic (n 210) 14

behaviours. While transitional justice and peace processes are invoked shortly after the end of conflict, it is argued that the continuation of this dynamic has led to the exclusion of women from transitional justice mechanisms.²³¹ The gendered nature of conflict exhibits its impact on the post-conflict setting as well. This in turn has many negative implications for women, who among other things remain excluded from peace-making and other reconstruction processes. While male domination is evident during the conflict, it is reflected in a continuum after the end of conflict. This is proven with the statement that “conflict traditionally promotes a militarized, violent, masculine paradigm. These dynamics often remain in place as the community works through transition, with serious implications for women.”²³² These implications range from: being excluded from TJ processes, being seen only as victims, being denied of their agency and directly facing the consequences of the conflict such as poverty. While there is a growing field of research in relation to masculinities at war, the field of how masculinities are reformed in the post-conflict arena remains under researched.²³³ This is a result of priorities in efforts of re-building the country after conflict. Analysing the continuity of masculinities in TJ is not a priority, as “state security discourses tend to dominate at the expense of human security.”²³⁴

Transitional justice rests on legal foundations, which are claimed to be gender biased. The legalist perspective of TJ has been criticized for excluding women, and privileging the interests of men.²³⁵ This comes as a “consequence of the male domination of peace negotiations where contemporary transitional justice mechanisms often are set up as part and parcel of the peace accord that establish the new post-conflict order.”²³⁶ Furthermore, the legal structures embedded in these agreements do not recognize the specific needs of women, specifically socio-economic rights which affect women in particular ways.²³⁷

In most peace negotiations it is predominantly males who participate in these talks, but what can be observed is that these negotiations are usually done by the same people who fought the war. According to Sanam Anderlini, “from Dayton to Rambouillet, Arusha to Colombia, it is predominantly male leaders of the fighting parties who are negotiating an end to war and

²³¹ Zetes (n 203) 1299

²³² Zetes (n 203) 1300

²³³ Brandon Hamber, ‘There Is a Crack in Everything: Problematising Masculinities, Peacebuilding and Transitional Justice’ (2015) 10

²³⁴ Ibid 11

²³⁵ Buckley-Zistel and Zolkos (n 128) 15

²³⁶ Bjorkdahl and Selimovic (210) 6

²³⁷ Buckley-Zistel and Zolkos (n 128) 21

laying the foundations for peace.”²³⁸ Stereotyping is a characteristic within these negotiations, as women are excluded with the reasoning that they did not participate in the fighting and as such do not deserve to deal with the peace making process.²³⁹ J Ann Tickner has stated “too often women’s experiences have been deemed as trivial or important only in so far as they relate to the experiences of men.”²⁴⁰ While in the conflict period the experiences of women did not relate to those of men, they are deemed as unimportant and thus women are excluded from processes that will shape their lives.

The burden of excluding women from TJ processes falls on the international community equally as on the local community. The exclusion of women from transitional justice processes “speaks to the larger nature of conflict and dynamics in post-conflict societies.”²⁴¹ The power dynamics in the post-conflict period are played between the local community and the international one as an additional actor. As such, transitional justice processes can lead to a re-entrenchment of already existing gendered hierarchies.²⁴² This comes as a result of the interplay between transitional justice and hegemonic masculinity, which can result in the subordination of women throughout these processes. Many attribute the exclusion of women as a result of the “male-dominated leadership, not only at the domestic level, but deeply ingrained (and unquestioned) at the international level as well.”²⁴³

Throughout the post-conflict rebuilding processes the fusion of local and western masculinities leads to a deeper entrenchment of such notions, and puts women in a position of subordination.²⁴⁴ Throughout these processes the needs of women are ignored, and prosecuting the crimes against women victims do not attain priority. Gender-based crimes tend to be side-lined in the post-conflict period by the international community which can lead one to conclude that gender as a concept is not a priority. Fionnuala Ni Aoláin argues that this comes from the “intact western conceptions of human rights hierarchies imbued with their inability to consider their own patriarchy and unwillingness to recognize it at work in an export form.”²⁴⁵ This comes from the fact that occurrences such as male domination through patriarchy, once embedded in a society are very hard to be eradicated since they are perceived

²³⁸ Puechguirbal (n 227) 177

²³⁹ Ibid

²⁴⁰ Simic (n 44) 69

²⁴¹ Zetes (n 203) 1307

²⁴² Buckley-Zistel and Zolkos (n 128) 13

²⁴³ Zetes (n 203) 1302

²⁴⁴ Ní Aoláin (n 41) 1057

²⁴⁵ Ibid 1059

as something normal. As such, the international community tends to ignore its own patriarchal notions as well as those of the local community, as they are perceived as normal. To best exemplify this, one can start from the statement of the UN Special Envoy to Kosovo, Martti Ahtisaari, who when asked why there is such a low number of women involved in peace processes responded “it very often depends also what is the availability. Can somebody move, in some cases it is a question that person can’t move for family reasons, or other reasons, there are many constraints.”²⁴⁶ Such statements illustrate the patriarchy embedded in the international community, where it has become a norm that the woman is associated exclusively with the private sphere, and because of her family duties cannot be included in the public sphere. Many feminists argue that patriarchy is the cause of violent societal conflicts, but also of the frequent failures of the international community to provide a long-term resolution to the conflicts.²⁴⁷ The interplay between patriarchy and masculinities becomes deeply embedded and can amount to one of the explanations for the exclusion of women from transitional justice, by the local as well as international community.²⁴⁸ It is argued that the international community is unable to acknowledge the negative effects of its own patriarchy thereby limiting the effect of transitional justice measures in a certain community. Cockburn and Zarkov argue that “the post-conflict environment, like conflict, is vividly about male power systems, struggles and identity formation.”

The male dominated peace making process ignores gendered power hierarchies within the society, which leads to a deprivation of female agency. Women continue to be associated as nurturing mothers in the private realm, leading to an extension of the same view to the post-conflict realm. This leads to an exclusion of women from peace negotiations because they are valued only for their private duties such as being the caretakers of children.²⁴⁹ Because transitional justice mechanisms usually focus on formal proceedings in the public sphere, the impact of women remains diminished.²⁵⁰ This links to the notion which was explained in chapter 2, where during conflict women are seen only for their motherhood. As it can be noted, this is then reflected in the post-conflict setting as well. The only difference is that while during the conflict women were respected for their familial character and motherhood, the post-conflict setting tends to use this as a reason to ignore women.

²⁴⁶ Puechguirbal (n 227) 178

²⁴⁷ Ibid 179

²⁴⁸ Ní Aoláin (n 41) 1060

²⁴⁹ Puechguirbal (n 227) 176

²⁵⁰ Zetes (n 203) 1302

The so called “fraternity” which governs the pre-conflict phase, and was explained in the previous chapters, is now replaced by the “international fraternity” in the post-conflict setting. As Handrahan notes “this 'international fraternity'-the community of decision makers and experts who arrive after a conflict on a mission of 'good will'-holds the upper hand, morally, economically and politically.”²⁵¹ The men of the international community while masking their goals as aiming to bring peace, also bring with them their own gender norms and patriarchal behaviour which are discriminatory towards women.²⁵² Now when patriarchal views of the international community are combined with patriarchal and masculinist views of the local community they tend to operate “in tandem to exclude, silence, or nullify women's needs from the transitional space.”²⁵³ These exchanges of the local and international masculinities and patriarchal attitudes are a threat to the transitioning society as they tend to re-entrench the gender biased attitudes which were present before the conflict. As elaborated by Ni Aolain “patriarchies may meet in the guise of reform, and the exchange may do little more than further embed existing propensities to and silences around violence.” It should be noted that because the international community is seen as the “saviour” so are their actions to which the local community is highly receptive and appreciative. In these cases the legitimization and validation of their transitional justice strategies which are discriminatory towards women is highly difficult to remove.²⁵⁴ This difficulty stems from the fact that the international community is highly valued by the local community, which makes their discriminatory actions be disguised as beneficial for the community, and thus seen as something more than acceptable.

Gendered hierarchies and the exclusion of women by the international community mainly come as a result of a lack of political will; however the lack of political will to include women is a result of deeply embedded highly masculinized attitudes. Furthermore, by seeing women as vulnerable victims and associating them with children, the international community fails to take into account the experiences and competencies of women.²⁵⁵ The international community should work towards addressing the gendered hierarchies within TJ processes and encourage a change in social gender roles. As stated by Alexandra Zetes, “it is extremely important to remain cognizant of gender issues in transitional justice, and all actors

²⁵¹ Handrahan (n 160) 433

²⁵² Ní Aoláin (n 41) 1062

²⁵³ Ibid 1063

²⁵⁴ Ibid 1067

²⁵⁵ Puechguirbal (n 227) 182

must rethink some of the traditional gender assumptions that determine the way women have typically been viewed in transitional justice contexts in order to empower them to play an active role in their societies.”²⁵⁶ However, the international community continues to fail in addressing the patterns within transitional justice which exclude women and as such “fails to effect meaningful political and legal transformation for women in situations where profound social and political change is negotiated.”²⁵⁷

4.3 Are women only victims?

It has been stated that transitional justice processes tend to “ignore women, or limit their presence to being passive victims in need of protection.”²⁵⁸ In these scenarios women are portrayed as victims or vessels which contain nationalistic characteristics.²⁵⁹ This means that the victimhood of women is used either to achieve the goals of men, or to emphasize the hurt of the nation, not focusing on women’s personhood. Developments such as the adoption of UNSCR Resolution 1325 contributed to a somewhat increased inclusion of women in transitional justice mechanisms today. However, this inclusion usually means that women are reduced to a symbolic participation with limited impact. As such, when included women are usually “stripped of their agency and portrayed as ‘passive victims’ with little regard... given to their actual and potential roles in fostering security.”²⁶⁰

Throughout TJ processes, seeing women only for their victimhood is particularly noticeable in formal transitional justice processes such as judicial proceedings. As court proceedings are perpetrator and not victim centred, the treatment of victim-witnesses is very often damaging for women witnesses. This is because court proceedings usually follow the ‘women as victims’ scenario which leads to further victimization of women while ignoring their agency and experience.²⁶¹ Court proceedings need to recognize women’s agency which results in bringing the perpetrators to justice, thus women should be regarded as active agents of change contributing to achieving the goals of transitional justice. However, the lack of recognition of women’s agency is something which is not limited only to court proceedings. The whole field of transitional justice has transformed women to passive objects who

²⁵⁶ Zetes (n 203) 1308-1309

²⁵⁷ Ibid 1298

²⁵⁸ Bjorkdahl and Selimovic (n 7) 5

²⁵⁹ Ibid

²⁶⁰ Zetes (n 203) 1303

²⁶¹ Ibid 1304

“perform a scripted agency of being a victim or vessel containing nationalistic pride or hurt.”²⁶²

The adoption of a normative framework with regard to sexual violence in conflict has been regarded as one of the key successes for women in transitional justice. However, as noted before, despite the adoption of this framework there have been very few prosecutions that deal with sexual violence.²⁶³ Furthermore, the fact that this is seen as one of the most significant successes regarding women in transitional justice proves the point that women are seen only for their victimhood while their agency is minimized, and their personhood is not recognized.

While it is true that transitional justice recognizes the suffering of women during conflict, the overemphasis on women as victims, clearly limits their ability to be seen as agents of change. Most of the literature which focuses on women in transitional justice puts its focus on women as victims of sexual violence. There are several problems with this approach which include “a) over identifying women with the sexual domain and with the category of victims; b) making a distinction between war-time and peace-time (and domestic) sexual violence; and c) excluding from the gendered frame of analysis instances of sexual violence against men.”²⁶⁴

The over identification of women within the sexual domain and category of victims is harmful to the society since by not recognizing their efforts it can discourage women from taking action, and making a change. Furthermore, it reduces the experience of women to the sole aspect of sexual violence claiming that the only experience that is worth re-telling is that. This also leads to women’s plural experiences being left out of the newly written history.²⁶⁵ In addition, the lack of discussion on male rape contributes to the further entrenchment of traditional gender roles. Very little is known on the topic of male rape as it is seen as one of the most stigmatized topics. In rare cases where there are testimonials they are often not labelled as sexual and are followed with stigma and shame. It is claimed that “sexual violence against both men and women reinforces patriarchal patterns of male domination and female submission.”²⁶⁶ As such male rape is said to be performed throughout a hegemonic masculinity attitude. Throughout the act of male rape, the perpetrators exert dominance as they seek to reduce the male to a feminised victim, and remove them of their masculinity.

²⁶² Bjorkdahl and Selimovic (n 7) 5

²⁶³ Zetes (n 203) 1304-1305

²⁶⁴ Buckley-Zistel and Zolkos (n 128) 6

²⁶⁵ Bjorkdahl and Selimovic (n 7) 7

²⁶⁶ Simić (n 44) 78

The over-emphasis of women as victims of sexual violence in times of conflict overshadows the fact that women in many cases are or continue to be victims of violence after conflict. This can be attributed to the change in gender roles during conflict. It is commonly accepted that conflict can lead to a shift in traditional gender roles which comes as a result of males leaving for war, while women take on the role of the provider for the household.²⁶⁷ Thus, conflict gives women a certain form of empowerment which might not be possible in times of peace. After the conflict is over and the men return, they often use domestic and other forms of violence to reassert their dominance. For this reason it is a fact that domestic violence against women increases after conflict. Furthermore, poverty has proven to be one of the reasons for leading men to assert their violent masculinities after conflict. It is claimed that after conflict men who “were deprived of their masculine roles, [...] use their physical strength, the one masculine attribute not affected by their social deprivation, to try to gain control in their environment.”²⁶⁸ Seeing women only as victims during the war is harmful, not only for not recognizing their agency but it can lead to ignoring the cases when they become victims of violence after the conflict.

4.4 Women as perpetrators

The sole focus on women as victims of sexual crimes is based upon stereotypical images of femininity such as peacefulness and non-aggressiveness, which leads to insufficient consideration of the role of women as political agents and, consequently also as perpetrators of violence and atrocities.²⁶⁹ Furthermore, the over identification of women as victims has led to the further entrenchment of patriarchal understandings of gendered roles where women are always seen as victims while men are the perpetrators. Because of these socially embedded gender roles, very often women perpetrators of war crimes become invisible, and their crimes unpunished.²⁷⁰ This leads to the diminishing of the effectiveness of the goals of transitional justice to be diminished, while the delivery of justice becomes gender biased. Once again one can witness that even in cases where women have committed wrongdoings their agency is still not recognized.

Even though the stereotypical image of a war combatant features a male soldier, it is certain that in every conflict there are women combatants, and as a result women perpetrators of war

²⁶⁷ Buckley-Zistel and Zolkos (n 128) 23

²⁶⁸ Hamber (n 233) 17-18

²⁶⁹ Buckley-Zistel and Zolkos (n 128) 11

²⁷⁰ Simić (n 44) 79

crimes. Women perpetrators of violence are looked upon based on their gender which sees them as incapable of committing violence.²⁷¹ The traditional view limits women as fragile and maternal, while by a masculine view men are allowed to be violent and at times this is deemed acceptable. Because the traditional view allows men to be perpetrators of crimes, even when women commit crimes they are not accepted as perpetrators, and in many cases are not tried for their crimes. One such case is notable within the ICTY, where among all its cases charges were brought against only one woman, Biljana Plavsic. There is a concern that the “lack of indictments [within the ICTY] against women facilitates the perception that women, with few exceptions, were victims rather than perpetrators of the war.”²⁷² This once again reinforces the notion that women are robbed of their agency through transitional justice mechanisms, even in cases where they commit crimes. Moreover, if one is to look at this reality through a patriarchal lens, and consider that if patriarchy is about male domination, then such an ideology only accepts the domination perpetrated by men through a subordination of women, and cannot accept scenarios where women exhibit similar actions of domination.

Biljana Plavsic, the former President of the Serbian Republic of Bosnia and Herzegovina was charged with genocide, crimes against humanity and war crimes, to which she pleaded guilty. She was sentenced to eleven years in jail, which is generally considered a light sentence for the international crimes which she committed. Throughout her trial, Plavsic was reduced to her gender, while emphasizing her womanhood by her defence attorneys and her femininity was highlighted to describe her humanity.²⁷³ By relying on her womanhood her defence implied that Plavsic deserved a lighter sentence since she could not be considered as dangerous as a man. Furthermore, the fact that this light sentence was given by the international community through the ICTY, portrays the gendered implications that the international community has on the post-conflict arena. It can be assumed that this sentence led to dissatisfaction within the Bosnian Muslim community and further perpetuated the view that the verdicts of the ICTY are biased. However, it can also be assumed that dissatisfaction arose within the Bosnian Serb community where men perpetrators of the same crimes received much higher sentences.

²⁷¹ Laura Sjoberg and Caron E. Gentry, *Mothers, Monsters, Whores: Womens Violence in Global Politics*, 2

²⁷² Ibid 151

²⁷³ Ibid 154

Another example where women were robbed of their agency even though they were accountable is the case of women combatants of the Lord's Resistance Army (LRA) in northern Uganda. Once they returned from the conflict, these women were not accepted within the community not because of their wrongdoings but for the fact that they had been the wives of the LRA commanders.²⁷⁴ Cases such as these, point to the conclusion that in conflict and post-conflict situations, where women are not regarded as victims but should be seen as perpetrators they are once again robbed of their agency and personhood, and reduced to a role which is gendered and passive.

4.5 Why should women be included in Transitional Justice?

During conflict women play important roles for their families but also for the whole community. Their contributions continue after the conflict as well, however they are not recognized despite the potential they could generate. "It has been demonstrated that women have a transformative potential, yet they are typically left out of the official peace negotiations and the formal work of building peace."²⁷⁵ As such, if women were to be included in post-conflict transitional justice processes they would generate transformative results to the community in question. In most transitional societies women make up of half of the population, while being responsible for addressing the basic survival needs of their families and victims.²⁷⁶ As such, it is evident that their role is crucial to begin with, even though not recognized. The inclusion of women in transitional justice processes is a question of democracy, and as such would lead to a more just and legitimate peace.²⁷⁷ If provided the opportunity women can play the role of "peacemakers, truth-seekers, integral parts of the international justice system, and agents of reconciliation and transition."²⁷⁸ As such, it can be implied that while the inclusion of women is certainly a question of equality and human rights, their participation can be crucial for peacebuilding success. The inclusion of women in TJ processes would provide for peace which is just in terms of gender.

As the experiences of conflict differ among men and women this contributes to men and women having different perspectives after conflict. As conflict is traditionally perceived through a masculine and violent lens, women can move beyond this and other gender-based

²⁷⁴ Zetes (n 203) 1307

²⁷⁵ Björkdahl (n 151) 288

²⁷⁶ Zetes (n 203)1309

²⁷⁷ Björkdahl (n 151) 288-289

²⁷⁸ Zetes (n 203)1310

distinctions while developing other perspectives on transitional justice.²⁷⁹ While women usually did not participate in the fighting but helped their communities in different ways during conflict, they can use these experiences in the peacebuilding processes. Namely, “because of their different experiences of conflict, women often have different views on what peace means and how peace building should proceed.”²⁸⁰

In several cases women have been the first to cross ethnic and social divisions and call for reconciliation. After the war in Bosnia and Herzegovina women mobilized inter-ethnically in order to cross ethnic divisions and work towards issues such as wartime rape, the needs of widows and orphans and reconciliation. It has been argued that women can mobilize inter-ethnically because they focus on their experiences as women, while strengthening the sense of communal gender identity.²⁸¹ While it has been emphasized several times throughout this work that the ethnic division remains one of the biggest problems for BH, making use of women’s abilities in overcoming these divisions would be highly beneficial for the whole community.

Zetes cites women as neutral peace-makers as another reason for their inclusion. This stems from the fact that women can benefit from the stereotypical view which sees them as neutral and peaceful. Many have argued that the masculine paradigm of conflict has contributed to women being seen as the potential actors towards peace. This is argued by the statement “since military conflicts and diplomacy, which have traditionally been exclusively orchestrated by men, have failed to be a reliable system to safeguard peace, the inclusion of women in all stages of the peace process [has been] imperative.”²⁸²

In addition to these reasons, women are known to act as a bridge between the formal transitional justice mechanisms and the local community. This was seen in Liberia where women acted as mediators between the UN and local communities. Moreover, in Bosnia and Herzegovina women were seen as the informal bridge between the ICTY and members of their community.²⁸³ It should be highlighted that there have been studies which prove that the increased participation of women in transitional justice processes brings benefits to the whole

²⁷⁹ Ibid 1317

²⁸⁰ Ibid 1318

²⁸¹ Ibid 1318

²⁸² Ibid 1319

²⁸³ Ibid 1320-1321

community and the peace-building system.²⁸⁴ However, as stated throughout this chapter despite the benefits they bring women are constantly side-lined in transitional justice processes, while their agency ignored. This narrative is so deeply embedded even in formal and international structures that it is seen as acceptable, and something “natural.”

One should bear in mind that even in cases where women are included in peacebuilding; the traditional view on gender is evident. Namely, in Rwanda women used their power as mothers to call for reconciliation.²⁸⁵ As women are seen as nurturing and peaceful, if given the space they can use this power towards efforts of reconciliation. Moreover, throughout history women have “informally leveraged their position as mothers and wives to facilitate demobilization and demilitarization, though their efforts have largely been under-recognized by international transitional justice actors.”²⁸⁶ It is evident that the traditional view of seeing women as familial, nurturing and non-violent is deeply embedded, however if society can move beyond the point of ignoring women, and recognize their agency then it can foster important transitional justice processes such as reconciliation, the whole community can benefit.

Conclusion

Transitional justice should not be seen as a field which looks at the past, but as an opportunity which opens the door for societal transformation. The times when transitional justice is invoked are characterized as opportunities for social change. Because of this, they should be seen as times where traditional gender norms should be revisited. However, as gender in transitional justice is absent or reduced to victimhood of women, it raises questions and concerns regarding the real power of transformation that transitional justice holds. At times of war while mostly men combatants leave, this tends to break down patriarchal gender roles and gives women a sense of empowerment. However, as conflict ends the traditional and patriarchal roles are resumed.²⁸⁷ If this is not recognized, then it limits the possibility for transformation that transitional justice holds. While it is certain that transitional justice recognizes the fact that women often suffer disproportionately during conflict, the overemphasis on their victimhood limits seeing women as agents of change. It is the

²⁸⁴ Ibid 1321

²⁸⁵ Ibid 1319

²⁸⁶ Ibid 1320

²⁸⁷ Ibid 1324

obligation of the local as well as of the international community to work towards recognizing women as active agents of change.

5. Gendered implications within transitional justice processes in Bosnia and Herzegovina

International community involvements in post-conflict countries have been characterized with a top-down model of reconstruction which prioritizes western political and cultural norms, and a neo-liberal model of economics.²⁸⁸ This in turn has many implications for the local community, who a lot of times have no say on how the post-conflict reconstruction is going to look like, or because the reconstruction involves concepts unknown to them it is difficult to adapt to them. The fact that the international community often adopts “one size fits all” models of peacebuilding is best exemplified with the case of BH where the peacebuilding efforts came to resemble those in East Timor, Cambodia, or Namibia.²⁸⁹ The involvement in BH represents “one of the most intensive experiments in international-sponsored statebuilding carried out to date, and it became a template for other statebuilding missions (e.g. Kosovo and Iraq).”²⁹⁰ The international involvement was portrayed as an act of salvation by the West; however as it remains to be proven throughout this chapter, this involvement led to the re-production of gender norms. Furthermore, this peacebuilding initiative reinforced patriarchal relations of power and traditional gender roles in BH through the suppression of women. The peace that was established was far from gender-just.²⁹¹ The purpose of this chapter is to analyse women’s agency in BH through their self-initiative, as the transitional justice processes in BH, implemented mainly by the international community, led to a re-entrenchment of traditional gender norms.

As seen in the first chapter of this work, the transitional justice process in BH is slow and characterized with little agreement over the past. With the end of the ICTY mandate, transitional justice moved to a more internal domesticized process at the War Crimes Chamber of Bosnia’s State Court. Furthermore, the National Strategy for War Crimes Processing aims to process all war crimes until 2023. The Transitional Justice Strategy

²⁸⁸ Maria O’Reilly, ‘Muscular Interventionism : Gender, Power And Liberal Peacebuilding In Post-Conflict Bosnia-Herzegovina’ (2012) 530

²⁸⁹ Björkdahl (n 151) 289

²⁹⁰ O’Reilly (n 288) 531

²⁹¹ Björkdahl (n 151)

focuses on truth seeking, reparations and reform of institutions.²⁹² Despite the efforts in establishing a form of justice for the whole society, transitional justice processes in BH fail to reach gender justice, despite being the first country in the region to adopt a National Action Plan for the implementation of UNSCR 1325.²⁹³

The international community plays a big role in the lack of focus on gender within transitional justice. It can be argued that this is due to the high focus on power relations among the international and local community, both of which are predominantly male. Throughout these processes gender is not considered a priority and as such is side-lined. Very often the Western peacebuilding agenda is framed in gendered terms, where the “liberal international community is positioned as the heroic, altruistic, white male necessary to protect the vulnerable, inferior, feminized ‘other’ – the State/society it must rescue.”²⁹⁴ While during conflict the state is seen as vulnerable and feminine, and needed to be protected by the local men, the same scenario is reproduced in the post-conflict period. The only difference is that the male protector is replaced by the international one. Such was the case for BH, where the international peacebuilding agenda seen as an act of international salvation, led to the reproduction of gender norms, and in turn did not create the conditions for self-sustaining peace in the country. Throughout the peacebuilding process gender was used between the international and local community as a “tool to ensure the imposition of the values and norms inherent in the peacebuilding discourse and/or as a mechanism for local politicians to consolidate their domination of the private/domestic sphere.”²⁹⁵ If transitional justice processes rest on human rights values, then it follows that these processes should be inclusive and equal for all members of a society. From this it can be implied that the transitional justice processes in BH failed to take into account such values, and the resulting peace was characterized with gender justice gaps.

5.1 The Dayton Agreement and the Office of the High Representative for Bosnia and Herzegovina– the international community’s gendered involvement

The General Framework Agreement for Peace in Bosnia and Herzegovina (GFAP), also commonly referred to as the Dayton Agreement, was negotiated at the US Airforce Base in Dayton, Ohio, and signed in Paris on December 14, 1995.²⁹⁶ After four years of death and

²⁹² Bjorkdahl and Selimovic (n 7) 13

²⁹³ Ibid 14

²⁹⁴ O’Reilly (n 288) 535

²⁹⁵ Bjorkdahl (n 151) 287

²⁹⁶ Cockburn and Zarkov (n 9) 52

destruction, this agreement brought an end to the Bosnian War. However, the Dayton agreement brought much more than an end to the war; it shaped the lives of all Bosnian citizens, having a profound impact on women, albeit a negative one.

The Dayton Agreement contained the constitution of BH in Annex 4, which structured the country in two entities, “the Federation of Bosnia and Herzegovina,” and the “Republika Srpska.” This “did not reverse but rather reinforced ethnic identifications by establishing ethnic criteria of citizenship in the entities.”²⁹⁷ As it has been repeatedly stated throughout this work, ethnic division remains a big problem for BH, thus it is a major disappointment that the international community not only did not contribute to resolving it, but reinforced this division even more. From the drafting of the Dayton agreement it was visible that the peace process to come was not going to constitute a just peace.²⁹⁸ However, even though it may be claimed that they were left on paper and not realized, the main goals of the agreement were to “1) create new multi-ethnic and democratic institutions of a war-torn society to ensure respect for fundamental human rights and freedoms and the rule of law; 2) provide for post-conflict reconstruction toward sustainable peace for Bosnia and Herzegovina; and 3) prevent the recurrence of the conflict or its potential spillover in the region.”²⁹⁹ The fact that the Dayton Agreement divided geographical territory and political power between the three ethnic communities, led not only to the increase in ethnic divisions, but also gave even more power to ethno-nationalists.³⁰⁰ It is evident that the lack of attention to the local community composition which is characterized with problems stemming from the ethnic division has produced negative results and counter effects to the goals of TJ. Even though the international community assisted BH in institution-building, governance, holding of regular democratic elections, security sector and judicial reforms as well as refugee return, its role is seen as “a peace-making exercise in which international bodies have acquired a quasi-colonial role, running what is widely acknowledged to be a protectorate or trustee-ship.”³⁰¹ This was reinforced when the Peace Implementation Council which in 1997 granted ‘Bonn powers’ to the Office of the High Representative, gave him unlimited authority to impose laws regarding the implementation of the Dayton Agreement.³⁰² His powers were not

²⁹⁷ Ibid

²⁹⁸ Bjorkdahl (n 151) 294

²⁹⁹ Ibid 295

³⁰⁰ O'Reilly (n 288) 533

³⁰¹ Cockburn and Zarkov (n 9) 53

³⁰² O'Reilly (n 288) 533

transparent or accountable to the people of BH. Following this it can be assumed that peacebuilding efforts often fail to rest on democracy and human rights, because the understandings of the local community are not taken into account. This in turn led to “peace gaps” which are understood as “shortfalls between internationally brokered peace accords and local understandings of a just peace.”³⁰³

The link between gender and nation-building post-Dayton has produced a form of victimized and ethnicized femininity not conducive to efforts of building a gender just peace.³⁰⁴ The gendered nature of the Dayton peace agreement can be seen from the negotiation phase, during which all of the negotiators were men. This came as no surprise since “the war itself had been a highly gendered affair.”³⁰⁵ On a worldwide agenda at the time of the Dayton agreement negotiation, gender started to become included in transitional justice processes, and as such there was no excuse for the neglect of gender in this particular peace agreement. In addition, the international community failed to apply political strategies, or institutional provisions on gender equality that existed in the region prior to the war. Nor did it apply those provisions that were developed in many countries as a consequence of “three decades of feminist thinking and women’s movements.”³⁰⁶ As this agreement intended to shape the way of life of Bosnian citizens, the lack of attention to gender bears significant consequences as it did not correspond to the post-conflict reality of the country. In addition, after the end of the war it became clear that around two thirds of the population in BH was female.³⁰⁷ The fact that the issue of gender was left unaddressed indicated that these women would face difficulties in the post-war period and would continue to be disadvantaged in the society which the Dayton agreement sought to shape. It is ironical that the Dayton Agreement bound BH to all major international human rights conventions including the CEDAW.³⁰⁸ However, the discrimination against women persisted even though the agreement could have led to women’s empowerment if gender was included. The post/Dayton period saw a re-traditionalization of gender roles which had a profound impact on women, specifically their agency. “We have seen a re-traditionalization of gender roles” as one women’s rights activist

³⁰³ Bjorkdahl (n 151) 287

³⁰⁴ Bjorkdahl and Selimovic (n 7) 4

³⁰⁵ Cockburn and Zarkov (n 9) 55; See also Selimovic, Nyquist and Söderberg, 86

³⁰⁶ Cockburn and Zarkov (n 9) 16

³⁰⁷ Ibid 55

³⁰⁸ Cockburn and Zarkov (n 9) 57

testifies. The post-conflict period brought “the exclusion of women from the public space, and also the hidden discrimination within families.”³⁰⁹

It has been stated that “any organization is patriarchal: insofar as its internal culture privileges masculinity; insofar as its decision-making is uninformed by a concern for the actual lives of women as full citizens; and insofar as its policies and actual practices serve to re-entrench privileged masculinity in the wider society.”³¹⁰ While most of the local and international institutions have privileged masculinity it follows that most of these institutions have leaned towards patriarchy. As one of the international institutions with the most impact within the country, the Office of the High Representative for Bosnia and Herzegovina (OHBH) deserves a more thorough analysis. In the period between 2002, and 2006 OHBH was led by Paddy Ashdown. Even though this office adopted a number of reforms which were intended to strengthen the country’s rule of law and market economy, and ultimately lead BH towards EU integration, if analysed through a gendered lens the agenda of the OHBH contributed towards re-producing post-conflict hegemonic masculinities.³¹¹

In his personal accounts Ashdown narrated the international involvement in BH through a model of masculinity which “equates manliness with a responsibility to protect the vulnerable/backward/Balkanized/feminized ‘other’ from violence and harm.”³¹² Ashdown’s narrative saw Bosnian women as “pitiful refugees, desperate mothers/carers, traumatized prisoners and as the defenceless victims of sexual violence.”³¹³ It is a sad reality that the involvement which is supposed to reform the local mind-set regarding the views on women bears in itself the same notions of seeing women with no agency whatsoever. This further perpetuated the gender attitudes of the local community, since as the international community was seen as the “saviour,” it can be assumed that its views were regarded as modern, and accepted as such. Such views are maintained even more when the country in question has predispositions towards gender discrimination. Ashdown constructed his image in masculinist and paternalistic terms, where he is portrayed as the saviour “associated with the position of male head of household as the protector of the family, and, by extension, with masculine leaders and risk-takers as protectors of a population.”³¹⁴ One explanation for such views is

³⁰⁹ Bjorkdahl and Selimovic (n 7)5

³¹⁰ Cockburn and Zarkov (n 9) 30

³¹² O’Reilly (n 288) 536

³¹³ Ibid 537

³¹⁴ O’Reilly (n 288) Muscular Interventionism, *International Feminist Journal of Politics*, p.541

that they come as a result of the lack of attention of the West to its own patriarchal and gendered attitudes which are reflected on to the post-conflict community as a normal occurrence. A consequence of this masculinist logic is that it “puts those protected, paradigmatically women and children [but in this case all Bosnian citizens], in a subordinate position of dependence and obedience.”³¹⁵

It should be mentioned that there were international officials who were involved in gender issues. In the late 1990s, women were appointed to three key positions: Special Representative of the Secretary General within the UN mission to Bosnia and Herzegovina, Head of the OSCE Democratisation Department, and Head of Office for the Office of the High Commissioner for Human Rights. They encouraged the inclusion of domestic violence and women’s political participation on the agenda of the international community.³¹⁶ Despite their involvement, the peacebuilding project that resulted in BH is seen as a “gender project that (re)produces a gendered, classed and racialized/Balkanized order in which ‘manliness’ and ‘western-ness’ are both signifiers and sources of privilege, superiority and domination.”³¹⁷

5.2 The impact of leaving gender out of transitional justice on women

After the conflict women in BH faced a lot of difficulties in finding a source of livelihood. Firstly, the Dayton Agreement changed the economy of the state from a state-led economy of the former Yugoslavia, characterized by social ownership and marked, to a neo-liberal free market.³¹⁸ The new economy was seen as highly masculinized and militarized, while the society was “characterized by a significant growth in organised criminal activity, increased the marginalization of women.”³¹⁹ In the new economy many women who found themselves as single parents and the main providers of the household were left with difficulties in finding a source of income. Statistics have shown a feminisation of poverty which is ongoing, and has put women in a particularly vulnerable position.³²⁰

The assumption of the international community at large that the heads of the family remain to be men has implications on women, as the assistance is distributed to men irrespective of the

³¹⁵ Ibid

³¹⁶ Johanna Mannergren Selimovic, Åsa Nyquist and Agneta Söderberg, ‘Equal Power Lasting Peace, Obstacles for Women’s Participation in Peace Processes’ (The Kvinna till Kvinna Foundation 2012) 88

³¹⁷ O’Reilly (n 288) 543

³¹⁸ Cockburn and Zarkov (n 9) 60

³¹⁹ Zarkov book, p.56

³²⁰ Selimovic, Nyquist and Söderberg (n 316) 88

fact that such as in the case of BH, numerous times it is predominantly women who are the heads of household. “This often results in the marginalization of female single heads of household and widows – who subsequently lack access to assistance.”³²¹

Most of the female led households resulted from the fact that most men had died or were missing after the war. Along with the psychological harms that the women relatives of men victims face, there is also the economic, social, and psychological harm. This mostly stems from traditional gender roles and structural inequalities which generate the consequences felt by women. With the disappearance of males who in patriarchal societies are usually the family’s sole provider, women are pushed into severe poverty and victimization.

Furthermore, this poverty is intensified when in a short period these women become the single head of the household.³²² In patriarchal countries such as BH this role is almost always held exclusively by men, as such traditional norms that revolve around this role may put the women at a disadvantage in securing financial resources, Furthermore, disappearance can have a disproportionately negative effect on older women, because in many cultures, BH included, male children are expected to support their parents in old age.³²³ This puts elderly women at great financial risks when their sons disappear. Such effects can be assumed to have been felt by the elderly women whose husbands and sons died in the Srebrenica genocide, and they were left with no source of income.

Furthermore, even the women who were not widows and not the main providers of the household faced difficulties in economic terms. As the country transitioned to liberal capitalism from being a socialist country, it offered men more opportunities to emphasize and increase the social distance between them and women. Furthermore, the rise of masculinism is seen as the primary characteristic in gender relations not only in BH but throughout Eastern Europe, where with the loss of socialism’s welfare safety-nets, masculinism is enacted on a grand scale to increase the marginalization of women in economic terms as well.³²⁴

The economic hardships faced by women could be eradicated through gender just reparation programs. Unfortunately, women are largely absent from the design of reparation program, and the lack of gender inclusion within reparation programs can reproduce gender biases and hierarchies. Despite having the potential to transform traditional gender roles, this fact is

³²¹ Puechguirbal (n 227) 174

³²² ICTJ Report, gender and enforced disappearances, 6

³²³ Ibid

³²⁴ Cockburn and Zarkov (n 9) 77

often ignored. In BH the issue of reparations was ignored by the ICTY, while the state does not have a comprehensive reparation program. It should be noted that victims of sexual violence are not recognized as such by any law; however the state provides victims with a monthly pension. In patriarchal societies this is seen as the more beneficial method as it enhances women's agency, and the money is more likely to be spent by the victim.³²⁵ Rubio Marin has identified several criteria for engendering reparations where the second one includes looking at ways to ensure that patriarchal norms do not leak into the reparation program. On the other hand patriarchal structures within BH are said to be one of the reasons for the lack of development of a gender just reparation program.³²⁶

In addition to the difficulties in finding financial resources, evidence shows that after the war domestic violence increased compared to the period before the war.³²⁷ Unfortunately, domestic violence is not seen as an issue which demands urgent attention in the period of post-conflict reconstruction. It can only be assumed that this leads to an increase in domestic violence and it's under reporting, but "by the neglect [it] perpetuates in peacetime one core propellant of militarization: the presumption that masculinized violence is natural."³²⁸ As elaborated in the previous chapter, the post-conflict violence against women is seen as a way to reassert male dominance, as their masculine identity is put at risk with the economic decline and by the recently established international masculinity which takes upon most positions of power.

As such, the lack of gender consciousness by the international community to address the consequences of violence against women, led to an increase of serious human rights violations such as human trafficking. Women and girls were being trafficked for purposes of enforced prostitution. Furthermore, the 50,000 international personnel in BH most of whom were male constituted the frequent clients of sexual services. As local men did not have the financial resources, men from the international community made up the market for sexual services.³²⁹ It is even more disturbing to know that even though in a limited number, members of the international community in BH assisted in the trafficking of Bosnian women.

³²⁵ Bjorkdahl and Selimovic (n 7) 21-22

³²⁶ Ibid 24

³²⁷ Cockburn and Zarkov (n 9) 56

³²⁸ Ibid 27

³²⁹ Cockburn and Zarkov (n 9) 61

During an interview a trafficked woman reported that a Russian soldier transported her to BH where he sold her and her friend to a brothel owner.³³⁰

Unfortunately, the international community failed to take responsibility and investigate the human rights violations committed by their personnel.³³¹ It is claimed that the lack of understanding of the politics of masculinity in the post-conflict period contributes to the wrong understanding that the presence of women and girls “willing” to engage in sexual intercourse is a “natural, indeed harmless, transnational phenomenon.”³³² Views such as these prevent the peacekeeping operations in understanding the serious human rights violations being committed by their personnel. The trafficked women found themselves in a post war situation which was similar to the war situation in which countless women were subjected to rape in concentration camps. The parallels between these two scenarios include “the imprisonment of women, their brutalization and sexual enslavement, and their lack of access to outside assistance.” Another parallel includes the nature of their abusers, which is seen as highly militarized even after the war; the only difference is that the uniforms of the military were of their supposed “saviour,” the international community.³³³

5.3 Marginalization of women in post-war politics

The marginalization of women was mostly visible in the political arena. The Dayton Agreement set out the political agenda in BH, which was characterized mainly with male norms and standards, and male politicians.³³⁴ The first free elections in BH brought to power nationalistic parties which relied on programs that advocated patriarchal values which marginalized women. This led to BH becoming an even more traditional society, where the elections cemented ethnic divisions, marginalized women in political decision-making, and did not push for political reconciliation.³³⁵ The lack of women in politics led to the further re-entrenchment of views which see women as valuable only in the private domain, and not in the public one. However, the revival of traditionalistic views is not only a product of the local community. Firstly, the Dayton Agreement did not mention any proactive measures which should be taken in order to increase female representation in politics.³³⁶ Secondly, the Office

³³⁰ Mazurana and Rubens (n 25) 154

³³¹ Cockburn and Zarkov (n 9) 64

³³² Mazurana and Rubens (n 25) 34

³³³ Cockburn and Zarkov (n 9) 65-66

³³⁴ Bjorkdahl (n 151) 297

³³⁵ Ibid

³³⁶ Ibid 303

of the High Representative for Bosnia and Herzegovina contributed to the marginalization of women in post-war politics as it appointed mainly men to senior positions in the government bodies.³³⁷

One of the reasons for the exclusion of women from the political sphere is claimed to be traditionalism. According to Professor Vukadinović in BH “nationalist parties and religion observe women very conservatively, and consider that their place is in the house, and not at work, in politics, or anywhere else.”³³⁸ From this follows that the view of seeing women as mothers who belong in the house is constantly used as a reason for their exclusion in the overall post-conflict period, specifically transitional justice processes. Furthermore, throughout the marginalization of women in politics, their reproductive rights are once again given attention, although for quite undemocratic purposes. Björkdahl’s states that the “revival of localized conservative, religious, and nationalist forces, which emphasize women’s reproductive capacity and homemaking role, construct politics as a male domain.”³³⁹ However, while the role of women as mothers is “central in the dream of civic unity,” this role is not considered when constructing the post-conflict politics arena, as women retain a secondary role.³⁴⁰ The exclusion of women in peace politics can be considered to have played a part in cementing a peace which is not gender-just. The whole politics arena in BH was constructed with serious flaws. The fact that peace politics was considered as elite-oriented, exclusive, and internationally dominated demonstrated that liberal democratic peace failed to take root in BH.³⁴¹

5.4 Women’s agency through civil society

As women were highly marginalized in all of the political and state-led positions they sought alternatives to make an impact in the reconstruction of the society and exercise their agency. As such, women were noticeably active in the sphere of voluntary organization.³⁴² Through this agency women were able to contribute towards improving the lives of other women who were facing the consequences of the war. A research done by the authors of the “Postwar Moment” Book analysed some of women’s organizations in BH and revealed the main activities of such organizations, where the predominant one was to assist women in regaining

³³⁷ Ibid 298

³³⁸ Ibid 299

³³⁹ Ibid 300

³⁴⁰ Ibid 303

³⁴¹ Ibid 301

³⁴² Cockburn and Zarkov (n 9) 70

their economic independence. Secondly, as rape during war received significant attention it increased the general awareness on violence against women. For this reason many organizations took actions on the issue of violence against women. Thirdly, some organizations provided legal advice, which mainly helped women resolve housing disputes which were a high occurrence in the post-conflict period.³⁴³ Fourth, many worked towards initiatives which would bring about women's involvement in politics. One of the most fruitful initiatives towards including women in politics was done through a campaign organized the NGO "Nas je Vise." The thirteen NGOs involved in the campaign called on women to engage in peace politics and discuss points of local political concerns. The result of the massive campaign was the legislative change which introduced a new provisional gender rule in 1998 elections requiring that at least three persons of the minority gender be on the top ten of each candidate list. Furthermore, during the period of 1998-2003 a Gender Equality Law was passed which introduced gender mechanisms and adopted the strategy against human trafficking.³⁴⁴ Going back to the activities of women organizations, many of them took upon themselves to lead the efforts towards reconciliation. This was mainly done internally by cooperating along ethnic lines and organizing activities for returners.³⁴⁵ One of the main reasons why women's organizations were considered significant is because they were the first to cross the line between Republika Srpska and the Federation of BH and to start the rebuilding of trust and communication, as well as to raise awareness on the effects of inequality.³⁴⁶

Women involved within the civil society have also stepped in to provide reparations when governments have failed to do so. "Medica" Women's therapy centre is such an example. It was founded in 1993 when the war was still going on, in order to tend to the needs of raped women. The centre provided medical care, psychotherapy, trauma treatment and other healing approaches. Although most of the assisted victims were female, there was a number of male rape victims who were assisted by "Medica". After the conflict the centre included also assistance to victims of domestic violence, everyday rape and escape from prostitution and trafficking. Today, "Medica" is recognized by the local government, and assists in policy development.

³⁴³ Cockburn and Zarkov (n 9) 71-72

³⁴⁴ Bjorkdahl (n 151) 307

³⁴⁵ Ibid (n 343)

³⁴⁶ Bjorkdahl (n 151) 304; See also (n 316) 85

Another initiative within the civil society where women exhibited agency was the non-judicial Women's Court for the former Yugoslavia. The Court aimed at increasing the "visibility of women's resistance to war, nationalism, militarism and sexism, highlighting their contributions to TJ processes, and promoting their active participation in peacebuilding."³⁴⁷ This court provided a platform to women to share their experience of violence and injustice both during and after the war. The four day event extended the recognition of women's various experiences and highlighted their capacity to demonstrate agency and resistance.³⁴⁸ The bottom-up approach of the Court was a response to the shortcomings of the top-down approaches of transitional justice which emerged in countries of the Former Yugoslavia.³⁴⁹ It was seen as an initiative which aimed to counteract the victimization of women done by the local and international community. While sharing their experiences women recounted the consequences of being excluded in the post-conflict period such as "managing sudden accession to heads of households; surviving in conditions of insecurity and economic adversity; returning to pre-war homes and communities and fighting to reclaim property or alternatively remaining displaced and being unwilling/unable to return." They also identified the continuum of violence and inequality in both war and peace time.³⁵⁰ The testimonies presented throughout this event provided insights to the gendered impact of wartime violence as well as the transition from war to peace.

The motives of women for joining such organizations ranged from quelling their own fear, escaping confinement to regaining agency.³⁵¹ From this analysis one can conclude that even though women are denied agency in the public realm, with their own initiative they find ways to display this agency in order to work towards goals of rebuilding the society in a gender-just way. However, civil society spaces where women perform agency are often marginalized, leading to women facing double exclusions based on "both a gendered bias as well as a bias against civil society."³⁵² It is a pity that both the local and international community do not recognize the agency of women in the post-conflict period, since as exhibited in this case it can work towards reaching the aims of transitional justice. Overall

³⁴⁷ O'Reilly (n 288) 426

³⁴⁸ Ibid

³⁴⁹ O'Reilly (n 288) 429

³⁵⁰ O'Reilly (n 288) 430

³⁵¹ Cockburn and Zarkov (n 9) 72

³⁵² Bjorkdahl and Selimovic (n 7) 12

women's organizations played the role of peace localizers who were able to work towards peace which lies on democratic principles, despite their place in local hierarchies.³⁵³

5.5 Women's agency through testifying in courts

Even though sexual violence during the Bosnian war has become the image of this war on an international level, on a local level women's experiences are invoked as a "symbol of the nation's collective hurt and suffering."³⁵⁴ According to Bjorkdahl victims remain marginalized, both socially and economically, as there is no reparation program to redress the violations which they endured. In addition, the complex legal framework, institutional complexity and the lack of rights for wartime sexual violence victims hinder access to care. Besides the help provided by women organizations, state assistance to victims remains inexistent. "Patriarchal, religious, and nationalist discourses"³⁵⁵ have been cited as reasons for the lack of efforts to address these issues.

Despite the fact that the ICTY convictions for rape as a crime against humanity have been pivotal in the sphere of international law, on the local level these verdicts are viewed as biased.³⁵⁶ Women have participated in these trials, as witnesses and have exercised agency despite the difficulties they faced. "Several witnesses have been threatened and programs for witness protection are either non-existent or very marginal."³⁵⁷ Bjorkdahl notes that while rape is a taboo topic; by testifying in cases of sexual violence women witnesses bring shame upon themselves and their family, where the long term consequences of being shamed in their communities as well as their insecurity prove to be overwhelming. While the stereotypical reason as to why these women choose to witness is considered for their own healing, which is inherently true, however it is not the only reason. One of the main reasons was to "make the perpetrator accountable for what he did and to see him punished, to prevent other women and girls from being raped, and to tell 'what really happened.'³⁵⁸ From this statement alone one can see that the agency exercised by these women is done for the same purposes as the goals of TJ. Namely, by testifying these women seek justice, accountability, and provide for a truthful account of the past.

³⁵³ Bjorkdahl (n 151) 306

³⁵⁴ Bjorkdahl and Selimovic (n 7) 19

³⁵⁵ Ibid (n 7) 15

³⁵⁶ Ibid

³⁵⁸ Bjorkdahl and Selimovic (n 7) 17

5.6 Women's agency in combating denial of truth

The complicated situation in establishing a truthful historical record in BH has rendered women and their experiences, as well as their agency as invisible.³⁵⁹ Despite this fact, women have pushed for the truth to come out and have displayed agency through several actions. One of the most known actions happened in 2004 when a group of women travelled to the town of Foca in Republika Srpska which during war time was the site of several rape camps. The testifying of the survivors of these camps in the ICTY constituted a crucial factor in establishing that rape is a crime against humanity. However, on the local level the rape camps are not included in public discourse or public space. The rape camp building is used as a sports hall, while close by there is a huge monument commemorating the fallen Bosnian Serb soldiers. Thus, the aim of the women who travelled there, many of whom were imprisoned in this camp, was to commemorate the building. Upon their arrival these women were denied entry by the police, while the citizens of the city threw stones at them. It is said that through this action, the women challenged the ethno-nationalist tale of victimhood among Bosnian Serbs, where as they disrupted the image of the commemorated heroic Serb soldier, they unsettled the stereotype of silent and passive women victims.³⁶⁰ From this action one can notice that even though these women were denied agency, despite their self-initiative for exercising it, their actions would lead to combating denial of the truth, and providing for memory work. Once again it is visible that if women's agency is recognized it may lead to the fulfilment of TJ goals, and measures.

5.7 Women's agency through the quest for truth

As seen throughout this chapter women have exercised agency in every aspect of the post-conflict hardships where there was no assistance provided by the state or in cases it was ineffective. The Association "Movement of Mothers of Srebrenica and Zepa Enclaves" is a Bosnian non-governmental organization established in 1996. The mission of this association is to gather survivors and family members of the disappeared or killed during the Srebrenica Genocide. The main reason behind the establishment of the association is the "desire and needs of the mothers to directly participate in finding out the fate of those who have disappeared." The activities of the association may include "participation in the post-mortem exhumation, the identification process and burial of victims; dealing with economic, social,

³⁵⁹ Bjorkdahl and Selimovic (n 7) 18

³⁶⁰ Ibid 20

and health issues, as well as education of the children of its members.” In addition, the association works with members in the Federation of BH, Republika Srpska and the Diaspora.³⁶¹ From their activities one can see that this self-initiative for exercising agency revolves around the quest for truth, and the improvement of the hardships that the women face as family members of the disappeared. In addition, the fact that the association works with the two separate ethnic entities proves the fact that through their agency women can work across ethnic lines.

Along with all their activities within the Association of the Mothers of Srebrenica displayed remarkable agency in their efforts to seek justice on an international level. In 2007 the Association of the Mothers of Srebrenica filed a suit at the District Court of The Hague against the UN and the Government of Netherlands for their responsibility in the Srebrenica genocide, as failing to protect civilians entrusted to them by the UN, and failing their duty to prevent genocide. However the court held that in the case *Mothers of Srebrenica et al v. State of the Netherlands and the United Nations*, the UN enjoyed absolute immunity, and therefore the court did not have jurisdiction to hear the case.³⁶²

After this the Association of Mothers appealed to the European Court of Human Rights which in 2013, in its decision *Stichting Mothers of Srebrenica and Others v. the Netherlands*, declared the application inadmissible, stating that the Dutch court’s grant of immunity to the UN did not constitute a violation of the applicants’ right to access to a court.³⁶³ Another development occurred in 2014, when the District Court of the Hague decided on the civil case filed by the Mothers of Srebrenica against the Dutch State, that the Netherlands is accountable for the loss suffered by the relatives of more than 300 Bosnian Muslims who were deported by the Bosnian Serbs from the Dutch compound in Potocari.³⁶⁴

Conclusion

“For men to be willing to listen to women they must first respect them. This means a fundamental change of attitude. If, as in Bosnia, it does not come about, the masculine cultures of militarized societies will be amplified and exaggerated, instead of counteracted,

³⁶¹ Movement of Mothers of Srebrenica and Zepa Enclaves

³⁶² *Mothers of Srebrenica et al v. State of The Netherlands and the United Nation* (2012) Supreme Court of the Netherlands, 10/04437

³⁶³ *The Mothers of Srebrenica Case before the European Court of Human Rights : United Nations Immunity versus Right of Access to a Court’* (2016)

³⁶⁴ *Ibid* (n 362)

by the involvement. And women will be the ones to pay the price.”³⁶⁵ It is evident that the opportunity to change traditional gender roles offered by TJ failed to be implemented in the case of BH, with the responsibility of both the local and international community. Furthermore, the TJ processes implemented by the international community failed to lead to human rights centred results, and further re-entrenched the traditional gender roles relying on masculinity. There are a few lessons that can be learned from the Bosnian experience, first one being the responsibility of the international community to recognize the importance of periods of TJ and transmit it to the local community in order to encourage a possible change in traditional gender roles. The first step towards achieving this is recognizing women for their agency and not limiting them to passive victimhood. Furthermore, both the local and international community must recognize the informal spaces where women exhibit agency. This is of a crucial importance, since as seen with the case of BH, women can work towards achieving the goals of TJ even with their own initiative. Finally, the time has come for the whole field of TJ to move beyond the traditional standpoint and include women as actors who have the potential to transform, “or at least reformulate some of the rudimentary questions of the TJ field.”³⁶⁶

Final Conclusion

Transitional justice as a field has the potential to move beyond achieving the goals of restorative justice, retributive justice, reconciliation and non-recurrence, and work towards transforming societies characterized with masculine and patriarchal attitudes towards achieving gender equality within TJ. Throughout the first chapter of this work some of the TJ mechanisms were explained and their implementation or lack of within BH, showed that the society must move beyond denial of the truth if it wants to achieve a just peace. Women have the potential to contribute towards crossing ethnic lines and achieving a just peace. However, they have been excluded from transitional justice processes almost entirely, and in cases when they were included their presence was limited to passive victims in need of protection. In order to analyse the reasons for the exclusion of women, this work provided an analysis of the masculine views which dominate the conflict, specifically the conflict in BH. By understanding how masculinity can take on extreme forms through nationality during

³⁶⁵ Cockburn and Zarkov (n 9) 66

³⁶⁶ Buckley-Zistel and Zolkos (n 12) 2

conflict, one can understand the limits that are put on women during conflict. Namely, women are used as vessels of nationalistic pride, and valued only for their motherhood. The reproductive capabilities are attacked during the war by the enemy in order to de-humanize the other women and attack the masculinity of other men. The analysis on masculinity helps one determine how this flows in a continuum in the post-conflict period.

It is certain that the international community plays a tremendous role in transitional times of a country, as they are usually the main implementers of transitional justice processes. Thus, it is the obligation of the international community to ensure that their impact results in human rights centred results, including gender inclusion within TJ processes. Unfortunately, that is not always the case. Even decades after the passing of UN Resolution 1325 which recognized the importance of women within peacebuilding, women still remain underrepresented throughout these processes. Furthermore, during these processes women are not seen as active agents of change but are once again limited to their victimhood, and seen as passive objects in need of protection. Beyond the lack of political will by both international and local community, a deeper analysis reveals that the international, as well as local community fail to take into account their masculine and patriarchal attitudes, thereby limiting the presence of women in the public sphere, and seeing them through a traditional lens of belonging only within the private domain. The transitional justice efforts in Bosnia and Herzegovina have been slow with not a lot of progress. The efforts initiated by the Dayton Agreement and continued by the international community, and the ethno-nationalistic local community, led to a further division between the three ethnic communities, but also led to the re-production of traditional gender norms. This had numerous implications for Bosnian women who despite taking on important social roles like providing for the whole household, found themselves marginalized in all spheres of life. Traditional gender roles limited women as belonging only in the private sphere, and did not recognize their agency in rebuilding the post-conflict society. “While war often opens up opportunities for broader gender roles, it was clear in the case of Bosnia and Herzegovina that ethnopolitical war came with a backlash for women as in so many other conflicts. It is a backlash that continues into peace time.”

Despite this fact women organized through their own initiative in order to help other women, but also the society as a whole in rebuilding their lives. As such, women were active in the civil society through which they made lasting impacts on the society, and transitional justice processes. They were also truth and justice seekers, memory holders and active in combating denial. It is evident that through self-organization women shifted roles from being passive

rape victims to agents of change. From such cases one can conclude that it is crucial to recognize the agency of women in these critical times, not just for themselves, but for the benefits this can generate for the community as a whole.

Bibliography

- “About the ICTY” (About the ICTY | International Criminal Tribunal for the former Yugoslavia) <<http://www.icty.org/en/about>> accessed June 2, 2018
- ‘Addressing Gender in Transitional Justice Mechanisms’ (Democratic Progress Institute 2015) <<http://www.democraticprogress.org/wp-content/uploads/2016/01/Gender-in-Transitional-Justice-Mechanisms.pdf>>
- “ICTY Remembers: The Srebrenica Genocide (1995 - 2015)” (*About the ICTY | International Criminal Tribunal for the former Yugoslavia*) <<http://www.icty.org/specials/srebrenica20/index.html>> accessed June 13, 2018
- “Mothers of Srebrenica Et Al v. State of The Netherlands and the United Nations” (ICD - Crimes against humanity - Asser Institute) <<http://www.internationalcrimesdatabase.org/case/769/mothers-of-srebrenica-v-the-netherlands-and-the-un/>> accessed June 19, 2018
- ‘Patriarchy’ <<https://en.oxforddictionaries.com/definition/patriarchy>> accessed 3 June 2018
- ‘Serbian President Apologises for Srebrenica 'Crime'’ (*BBC News*, April 25, 2013) <<http://www.bbc.com/news/world-europe-22297089>> accessed April 12, 2018
- ‘Transitional Justice and Economic, Social and Cultural Rights’ (United Nations 2014) HR/PUB/13/5
- Zetes A, ‘Beyond Passive Victimhood: The Narrative and Reality of Women in Transitional Justice’ (2016) *International Law and Politics* 1293
- Christensen A.D and Rasmussen R, ‘War, Violence and Masculinities: Introduction and Perspectives’ (2015) 10 *NORMA: International Journal for Masculinity Studies* 189
- Björkdahl A and Selimovic J M, ‘Advancing Women Agency in Transitional Justice’ (2015) 46 *Security Dialogue* 1
- Björkdahl A, ‘A Gender-Just Peace? Exploring the Post-Dayton Peace Process in Bosnia’ (2012) 37 *Peace and Change* 286
- Smith A.D, ‘National Identity and the Idea of European Unity’ (1992) 68 *International Affairs* 55
- Anderson B, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (Verso 1990)
- Hamber B, ‘There Is a Crack in Everything: Problematising Masculinities, Peacebuilding and Transitional Justice’ (2015) *Human Rights Review* 1
- Cohn C, Kinsella HG and Gibbings Sh, ‘Women, Peace and Security Resolution 1325’ (2004) 6 *International Feminist Journal of Politics*
- Ornhaug C, ‘Armed Conflict Deaths Disaggregated by Gender’ (International Peace Research Institute, Oslo (PRIO) 2009)

- Bell C and O'Rourke C, 'Does Feminism Need a Theory of Transitional Justice? An Introductory Essay' (2007) 1 *The International Journal of Transitional Justice* 23
- Bell C, 'Women Address the Problems of Peace Agreements' (2004) *Transitional Justice Institute* 96
- Garbett C, 'From Passive Objects to Active Agents: A Comparative Study of Conceptions of Victim Identities at the ICTY and ICC' (2016) *Journal of Human Rights* 40
- Clinton B, "Dayton Accords" (*Encyclopædia Britannica* June 27, 2013)
<<https://www.britannica.com/event/Dayton-Accords>> accessed March 10, 2018
- Murphy C, 'International Criminal Trials and the Circumstances of Justice' (2017) *Criminal Law and Philosophy*
- Cockburn C and Zarkov D, *Postwar Moment: Militarities, Masculinities and International Peacekeeping: Bosnia and the Netherlands* (Lawrence & Wishart 2002)
- Cockburn C, 'Gender, Armed Conflict and Political Violence' (The World Bank 1990)
- Majstorović D, 'Femininity, Patriarchy and Resistance in the Postwar Bosnia and Herzegovina' (2011) 21 *International Review of Sociology* 277
- Bloomfield D, Barnes T and Huyse L, *Reconciliation After Violent Conflict* (International Institute for Democracy and Electoral Assistance 2003)
- Roman D, 'What We Know About Transitional Justice: Survey and Experimental Evidence' (2017) *Advances in Political Psychology* 151
- Orentlicher D.F, 'That Someone Guilty Be Punished, the Impact of the ICTY in Bosnia' (International Center for Transitional Justice (ICTJ) 2010)
- Mazurana D, Roberts A.R and Parpart J, *Gender, Conflict, and Peacekeeping* (Rowman & Littlefield Publishers 2005)
- Ní Aoláin F and Brown K, 'Through the Looking Glass: Transitional Justice Futures through the Lens of Nationalism, Feminism and Transformative Change' (2014) 9 *International Journal of Transitional Justice* 127
- Ní Aoláin F, *Women, Security, and the Patriarchy of Internationalized Transitional Justice* (2009), *Hum. Rts. Q.* <https://scholarship.law.umn.edu/faculty_articles/88> accessed 07 May 2018
- Van der Merwe H, Baxter V and Champan A.R, *Assessing the Impact of Transitional Justice: Challenges for Empirical Research* (United States Institute of Peace Press 2009)
- Amadiume I and An-Na'im A, *The Politics of Memory: Truth, Healing and Social Justice* (Zed Books 2000)
- Kahn J.S, 'An Introduction to Masculinities' (2009) Oxford: Wiley-Blackwell
- Natalya Clark J.N, 'Does Bosnia Need a Truth and Reconciliation Commission? Some Reflections on Its Possible Design' (2012) 12 *Ethnopolitics*

- Natalya Clark J.N, 'The State Court of Bosnia and Herzegovina: A Path to Reconciliation?' (2010) 13 Contemporary Justice Review 371
- Edström J, Das A and Dolan Ch, 'Introduction: Undressing Patriarchy and Masculinities to Re-politicise Gender' (2014) IDS Bulletin 1
- Hronešová J, 'Might Makes Right: War-Related Payments in Bosnia and Herzegovina' (2016) 10 Journal of Intervention and Statebuilding 339
- Nagel J, 'Masculinity and Nationalism: Gender and Sexuality in the Making of Nations' (1998) 21 Ethnic and Racial Studies 242
- Galtung J, *Peace by Peaceful means: Peace and Conflict, development and civilization* (Sage Publications, Inc. 1996)
- Selimovic J.M, *Perpetrators and Victims: Local Responses to the International Criminal Tribunal for the Former Yugoslavia*, (2010)
- Selimovic J.M, Nyquist Å and Söderberg A, 'Equal Power Lasting Peace, Obstacles for Women's Participation in Peace Processes' (The Kvinna till Kvinna Foundation 2012)
- Stojšavljevic J, 'Women, Conflict, and Culture in Former Yugoslavia' (1995) Gender and Development
- Lorber J. "'Night to His Day': The Social Construction of Gender". In *Paradoxes of Gender*. New Haven, Conn.: Yale University Press, 1994.
- El-Bushra J and Mukarubuga C, 'Women, War and Transition' (1995) 3 Gender and Development
- Mertus J, 'Women's Participation in the Criminal Tribunal for the Former Yugoslavia (ICTY): Transitional Justice for Bosnia and Herzegovina' [2004] *Women Waging Peace*
- Mostov J, 'Our Women/ Their Women; Symbolic Boundaries, Territorial Markers, and Violence in the Balkans' (1995) 20 Peace and Change 515
- De Feyter K and others, *Out of the Ashes: Reparation for Victims of Gross and Systematic Human Rights Violations* (Intersentia 2005)
- Lampe JR, "Bosnian Conflict" (*Encyclopædia Britannica*)
<<https://www.britannica.com/event/Bosnian-conflict>> accessed March 5, 2018
- Sjoberg L and Gentry C.E, *Mothers, Monsters, Whores: Womens Violence in Global Politics* (Zed Books 2007)
- Hansen L, 'Gender, Nation, Rape: Bosnia and the Construction of Security' (2000) 3 International Feminist Journal of Politics 55
- Brannon L, *Gender: Psychological Perspectives* (Allyn & Bacon 1997)
- Lindsey D, 'A Message to Europe: Serbia Apologizes for Srebrenica Massacre - Spiegel Online – International' (Spiegel Online, March 31, 2010)

- <<http://www.spiegel.de/international/europe/a-message-to-europe-serbia-apologizes-for-srebrenica-massacre-a-686663.html>> accessed April 28, 2018
- Lorentzen L.A and Turpin J, *The Women and War Reader* (New York University Press 1998)
- Handrahan L, 'Conflict, Gender, Ethnicity and Post-Conflict Reconstruction' (2004) 35 *Security Dialogue*
- Papa M.I, 'The Mothers of Srebrenica Case before the European Court of Human Rights : United Nations Immunity versus Right of Access to a Court' (2016) 14 *Journal of International Criminal Justice* 893
- O'Reilly M, 'Muscular Interventionism : Gender, Power And Liberal Peacebuilding In Post-Conflict Bosnia-Herzegovina' (2012)14 *International Feminist Journal of Politics* 529
- Doyle M.W and Sambanis N, *Making War and Building Peace* (Princeton University Press 2010)
- McWilliams M and Kilmurray A, 'From the Global to the Local: Grounding UNSCR 1325 on Women, Peace and Security in Post Conflict Policy' (2015) *Transitional Justice Institute*
- Movement of Mothers of Srebrenica and Žepa Enclaves* <<http://enklave-srebrenica-zepa.org/english.onama.php>> accessed June 13, 2018
- Feree M.M, Lorber. J and Hess B.B, 'Revisioning Gender' (2001) 16 *Hypatia* 190
- Puechguirbal N, 'Discourses on Gender, Patriarchy and Resolution 1325: A Textual Analysis of UN Documents' (2010) 17 *International Peacekeeping* 172
- Kritz N.J and Finci J, 'A Truth and Reconciliation Commission in Bosnia and Herzegovina: An Idea Whose Time Has Come'
- Simić O, *An Introduction to Transitional Justice* (Routledge, Taylor & Francis Group 2017)
- Blakemore O, Judith E., Barenbaum A.SH and Liben L.S. *Gender Development*. New York: Psychology Press, Taylor & Francis Group, 2009.
- Diehl P.F, *Peace Operations* (Polity 2008)
- Kirby P and Henry M, 'Rethinking Masculinity and Practices of Violence in Conflict Setting' (2012) 14 *International Feminist Journal of Politics* 445
- Dewhirst P and Kapur A, 'The Disappeared and Invisible, Revealing the Enduring Impact of Enforced Disappearance on Women' (International Center for Transitional Justice (ICTJ) 2015)
- Hayner P, *Unspeakable truths: transitional justice and the challenge of truth commissions* (New York, N.Y., Routledge 2011)
- Connell R.W. and Messerschmidt J.W, 'Hegemonic Maculinity: Rethinking the Concept' (2005) 19 *Gender and Society* 829
- Radhika Coomaraswamy, 'A Global Study on the Implementation of United Nations Security Council Resolution 1325' (UN Women 2015)

RFE/RL, “Međunarodna Komisija Za Nestale: Podržati Istinu o Srebrenici” (Radio Slobodna Evropa July 11, 2018) <<https://www.slobodnaevropa.org/a/29357068.html>> accessed July 12, 2018

White R, ‘Herder: On the Ethics of Nationalism’ (2005) 18 *Humanitas* 166

Carranza R, Correa C and Naughton E, ‘More than Words, Apologies as a Form of Reparation’ (International Center for Transitional Justice (ICTJ) 2015)

Buchanan R and Zumbansen P, *Law in Transition: Human Rights, Development and Transitional Justice* (Hart 2016)

Teitel R.G, ‘Transitional Justice Genealogy’ (2003) 16 *Harvard Human Rights journal* 69

Smith RJ, “Srebrenica Massacre” (*Encyclopædia Britannica* November 22, 2017) <<http://www.britannica.com/event/Srebrenica-massacre>> accessed April 10, 2018

Sofos S.A, ‘Inter-Ethnic Violence and Gendered Constructions of Ethnicity in Former Yugoslavia’ (1996) 2 *Journal for the Study of Race, Nation and Culture* 73

Stojmenović R, “Najduža Opsada u Povijesti: U Sarajevu Poginulo 14.000 Ljudi” (*24sata.hr* March 22, 2018) <<https://www.24sata.hr/news/najduza-opsada-u-povijesti-u-sarajevu-poginulo-14-000-ljudi-518841>> accessed March 14, 2018

Buckley-Zistel S and Zolkos M, *Gender in Transitional Justice* (Palgrave 2012)

Buckley-Zistel S, *Transitional Justice Theories* (Routledge 2015)

UN Commission on Human Rights, ‘Study on the Right to the Truth, Report of the Office of the United Nations High Commissioner for Human Rights’ (United Nations 2006) E/CN.4/2006/91

UN Economic and Social Council, ‘Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity’ (2005) E/CN.4/2005/102/Add.1

UN General Assembly, ‘Rome Statute of the International Criminal Court (last amended 2010)’, 17 July 1998,

UN Security Council, ‘The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies : Report of the Secretary-General’ (2004) S/2004/616

UNGA, ‘Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law’ (16 December 2005) UN Doc A/RES/60/147

Universal Declaration of Human Rights (adopted on 10 December 1948), 217 A (III)

UNSC, ‘Resolution 1325’ (31 October 2000) S/RES/1325

UNSC, ‘Resolution 1820’ (19 June 2008) S/RES/1820

Wendy Bracewell, ‘Women, Motherhood, and Contemporary Serbian Nationalism’ (1996) 19 *Women’s Studies International Forum* 25

Schabas W.A, Hughes E and Thakur R, *Atrocities and International Accountability: Beyond Transitional Justice* (United Nations University Press 2007)

Papic Z, 'Nationalism, Patriarchy and War in Ex-Yugoslavia' (1994) 3 *Women's History Review* 115