

CONCEPT AND  
FRAMEWORK FOR  
THE DEVELOPMENT  
OF A **GENDER-  
SENSITIVE**  
**REPARATIONS**  
**PROGRAM** FOR  
CIVILIAN VICTIMS  
OF WAR IN BOSNIA  
AND HERZEGOVINA

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WOMEN'S INTERNATIONAL LEAGUE FOR  
**PEACE & FREEDOM**

<http://womenorganizingforchange.org>

# ABBREVIATIONS

<b>BiH</b>	Bosnia and Herzegovina
<b>CVW</b>	Civilian victims of war
<b>FBiH</b>	The Federation of Bosnia and Herzegovina
<b>GC</b>	Geneva Conventions
<b>ICTY</b>	International Criminal Tribunal for Former Yugoslavia
<b>RS</b>	Republic of Srpska
<b>UNDP</b>	United Nations Development Programme
<b>UNFPA</b>	United Nations Population Fund
<b>WILPF</b>	Women's International League for Peace and Freedom

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# INTRODUCTION

Despite the fact that twenty years have already passed since the end of the war in Bosnia and Herzegovina, the reparations mechanisms for numerous violations of international humanitarian law and international human rights law are inadequate or almost non-existent. At the same time, Bosnia and Herzegovina as a state has the responsibility, in the context of the 1992-1995 war, to identify people responsible for war crimes, prosecute and punish them, to allocate reparations to victims of crimes, and to undertake prevention measures.

Since 2013, Women's International League for Peace and Freedom (hereinafter: WILPF) has spearheaded the initiative *Women Organising for Change in Syria and Bosnia and Herzegovina* (hereinafter: the Initiative). This Initiative focuses on the importance of acknowledging the existing direct war experience by women who after the war devoted their time to women's rights, attempting to change the dominant narrative of women as victims exclusively. Although this initiative started as cooperation between Syrian and Bosnian activists, with time it has grown to include exchange of experience with women activists from Ukraine, Iraq and Northern Ireland, making it an integral part of the WILPF Crisis Response Program. The Initiative is informal in nature and gathers members of women's organisation and individual activists working on the women, peace and security agenda (as well as other areas).<sup>1</sup>

The Initiative's work focuses on four main areas: access to social and economic rights, facing the past, transforming and shaping the space for political activity of women, and creating a dialogue of solidarity between women activists in war and post-war societies. The focus of the Initiative's work is based on the results of the retrospective drafted during the period September-December 2013 by BiH women activists.<sup>2</sup>

The Initiative held a series of meetings on the topic of social and economic rights that provided valuable information regarding BiH citizens' access to economic and social rights. Special focus was on civilian victims of war and their right to reparations. One of the conclusions of these meetings was that the Initiative's should also focus on developing a concept and framework for a reparations program in Bosnia and Herzegovina, which would define the basic elements of harms committed during the war, the beneficiaries of such a program, and possible reparations measures.

<sup>1</sup> The list of organisations and activists who took part in this Initiative can be found at: <http://womenorganizingforchange.org/lista-organizacija-aktivistkinja-koje-su-dio-inicijative/>

<sup>2</sup> The reports of the topic groups which drafted the retrospective can be found on the web page of the Initiative <http://womenorganizingforchange.org/desavanja/retrospektiva-djelovanje-zenskih-organizacija-u-proteklih-20-godina/>

The starting point for our work was the recognition of the unsustainability of the current system in which (both material and non-material) compensations for harms and violations of the international humanitarian law and international human rights law is based on the social welfare system and thus susceptible to significant changes within the BiH Reform Agenda.<sup>3</sup> We can already now account for a number of rights stipulated by the current laws that are not being implemented due to lack of resources. Further on, conflating social welfare and reparations aggravates the understanding of the victims and the society in general about the relation between the general obligation of the State to ensure basic economic and social rights to all BiH citizens, and the obligation of the State to specifically redress the harms suffered during the war because the State failed to protect its citizens.

We believe that a comprehensive and gender-sensitive reparations program would ensure access to reparations to all civilian victims of war without discrimination or mutual competition; that it would unburden the social welfare system thus contributing to the creation of a functional social welfare system for all the citizens in BiH. We commenced the work on this document with the objective of defining the basic elements and principles that will help all stakeholders in advocacy activities and reparations program development. We offer this document as a starting point for the reparations program development process.

We want to underline that this document addresses only the harms suffered by **civilian victims of war** in Bosnia and Herzegovina. In defining the harms, we did not strictly apply by their legal definitions that entail criminal sanctions; we put them in the context of experience and knowledge acquired over the last 25 years. A number of contextual adaptations of the international law have been made in order to place the definitions of harms within the context of BiH war and experiences of its victims.

The development of this document is supported by the Swedish Foundation Kvinna till Kvinna.<sup>4</sup>

3 The 2015-2018 Reform Agenda for Bosnia and Herzegovina, section Social Welfare and Pension Reform states: "Social welfare systems will be reformed (in consultation with the World Bank and IMF), including improved targeting for non-contributory social assistance and establishing a centralized database in the FBiH of all beneficiaries of social transfers. Reform efforts will seek to provide incentives to beneficiaries to become active participants in the economy while protecting and increasing social assistance for those who are most in need." The Reform Agenda can be found at: <http://www.fbihvlada.gov.ba/pdf/Reformska%20agenda%20.pdf>

4 This material is partly or fully financed by the Swedish International Development Cooperation Agency (Sida) and Kvinna till Kvinna. Sida and Kvinna till Kvinna do not necessarily agree with the presented ideas. The content of this document is the sole responsibility of its authors.

## SOME METHODOLOGICAL REMARKS

The drafting of the publication we call *The Concept and Framework for the Development of a Gender-Sensitive Reparations Program for Civilian Victims of War in Bosnia and Herzegovina* (hereinafter: the Concept) started in June 2015 with an educational workshop delivered by professor Ruth Rubio Marin<sup>5</sup> of the European University Institute, who provided a brief overview of basic elements to consider in developing gender-sensitive reparations programs.

We organised four workshops, as the professor suggested:

- Workshop #1 – harms and violations of law (September 2015)
- Workshop #2 – beneficiaries of the reparations program (October 2015)
- Workshop #3 – reparations measures (November 2015)
- Workshop #4 – finalisation of the publication and discussion on financial implications (November/December 2015)

In addition to the topics of harms and reparations measures, we decided that it is highly important to discuss the financial implications of such a program. To do so, we engaged Mrs. Velma Pijalović, PhD who teaches at the School of Economics and Business, University of Sarajevo. Mrs. Pijalović was present at our discussions during the last (fourth) workshop and she helped us map the financial situation in BiH and identify possible financing mechanisms. You can find the summary of our discussion in Annex 3.

During the course of our activities, we relied on our personal experience of war as well as our experience in working with different categories of civilian victims of war, different women's organisations, and war victim associations. We also applied our individual expertise in the domain of human rights, international humanitarian law, criminal law, transitional justice, comparative knowledge of processes taking place in other countries and so forth. We used documents such as the Geneva Conventions, declarations and conventions relating to human rights and humanitarian law, the BiH Criminal Code, statutes of the International Criminal Court and the International Criminal Tribunal for the Former Yugoslavia, the BiH Law on Missing Persons, other BiH laws relevant to social welfare, analyses and reports by Amnesty International and other international and local organisations, as well as other documents we deemed helpful. The starting point was always the wartime experience of BiH victims and their post-war experience in the context of accessing the rights they are entitled to on grounds of inflicted harm.

Understanding of the gender dimension of wartime harms and violations of human rights is insufficient. Gender dimensions of war experience have only recently emerged as a topic for discussion; therefore the knowledge we have today is not sufficient to offer a comprehensive approach to a gender-sensitive reparations program. Currently, the only understanding of the gender dimension relates to sexual violence while it is sporadic and anecdotal for other harms. Therefore, we list examples of gender dimensions which stem from our personal experience and knowledge, and serve as guidelines for further analysis in this text. However, any serious approach to defining harms demands a serious elaboration of gender aspects, which can be done by a thorough study of court judgments and other documents testifying

<sup>5</sup> Professor Ruth Rubio-Marín is the editor of *What Happened to the Women – Gender and Reparations for Human Rights Violations*.

as to victims' experience, as well as by additional work on documenting and taking statements from survivors.

The following people/organisations took part in the first three workshops, on different occasions, and formed the working group for the Concept proposal: Adrijana Hanušić (TRIAL), Aida Spahić, Bojana Đokanović, Elmaja Bavčić, Enisa Raković (Glas žene Bihać), Esma Drkenda (SEKA Goražde), Gorana Mlinarević, Jasminka Drino Kirlić, Lejla Arnaut (Žene ženama), Lejla Mamut, Mara Radovanović (LARA Bijeljina), Memnuna Zvizdić (Žene ženama), Milenka Sinanović (Forma F Mostar), Mirha Pojskić, Mirsada Tursunović (Naš glas Tuzla), Nejra Čengić, Nela Porobić Isaković, Nermina Trbonja, Nura Begović (Žene Srebrenice), Samira Krehić, Selma Korjenić (TRIAL), Stanka Frančić (Forum žena Bratunac), Suzana Božić, Šerifa Halilović (Srcem do mira), and Vildana Džekman (Fondacija CURE).

International experts in criminal law and human rights, Kirsten Campbell and Madeleine Rees, also contributed to this draft.

The concept was presented and approved during the fourth workshop held on November 30 and December 1, 2015. In addition to working group members, other interested activists and organisations were present at this workshop.

## THE STRUCTURE OF THE DOCUMENT

- **Introductory part** gives an overview about the people behind this document and why it had to be made.
- **Part 1 – International Legal Framework and an Overview of the Current Situation in BiH**
  - *The International Legal Framework* defines the right to reparations according to international law.
  - *An Overview of the Current Situation in Bosnia and Herzegovina* presents a short summary on the issue of the approach to civilian victims of war in BiH today.
- **Part 2 – Process of Developing a Reparations Program** encompasses several necessary steps to develop a comprehensible and acceptable to all reparations program. This part also gives an overview of the principles that must be respected by state authorities working on the design of a reparations program.
- **Part 3 – The Concepts and Basic Elements of the Reparations Program.** This is the key part of the document that consists of a proposal of harms and their definitions, as well as considerations of reparations measures and beneficiaries of the reparations program.
- **Annexes** – the document also contains an annex with supporting arguments and explanations referring to harms, an annex about the possible ways to achieve efficient and meaningful inclusion on women in the process of program development and implementation, and an annex on the financial implications of a reparations program.



# PART 1

## INTERNATIONAL LEGAL FRAMEWORK AND AN OVERVIEW OF THE CURRENT SITUATION IN BOSNIA AND HERZEGOVINA

### 1.1 OVERVIEW OF THE INTERNATIONAL LEGAL FRAMEWORK AND THE “RIGHT TO REPARATIONS”

According to international law, states are obliged to ensure reparations to victims in cases of gross human rights violations and violations of international humanitarian law. The purpose of reparations is to address the harms caused by violations, and ensure satisfaction for harms suffered through publicly recognizing victims as right-holders entitled to redress.

The normative foundation for advancement of transitional justice mechanisms are the four pillars of the modern international legal system – international human rights law, international humanitarian law, international criminal law, and international refugee law. Transitional justice mechanisms are grounded in the following ‘rights’:<sup>6</sup>

- **The right to justice** is enshrined in, among others, International Covenant on Civil and Political Rights (Art. 2),<sup>7</sup> Convention against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment (Art. 4, 5, 7, and 12),<sup>8</sup> and International Convention for the Protection of All Persons from Enforced Disappearance (Art. 3, 6, 7, and 11);<sup>9</sup>
- **The right to truth** is enshrined in, among others, International Covenant on Civil and Political Rights (Art. 2), International Convention for the Protection of All Persons from Enforced Disappearance (Art. 24);
- The legal basis for the **right to reparations** is enshrined in Universal Declaration on Human Rights (Art. 8), International Covenant on Civil and Political Rights (Art. 2), International Convention on Elimination of All Forms of Racial Discrimination (Art. 6),<sup>10</sup> Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Art. 14), the Convention of the Rights of the Child (Art. 39),<sup>11</sup> Hague Convention respecting the Laws and Customs of War on Land of 1907 (Art. 3), Protocol Additional to the Geneva Conventions of 1949 (Art. 91), Rome Statute of the International Criminal Court (Art. 68 and 75), Declaration on the Elimination of Violence against Women (Art. 4 d), and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

6 For more information see the General Secretary Report *The rule of law and transitional justice in conflict and post-conflict societies* S/2004/616; 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*, 60/147 (2006); and the UN Commission on Human Rights report *Promotion and protection of human rights – Impunity – Report of the independent expert to update the set of principles to combat impunity*, Diane Orentlicher E/CN.4/2005/102/Add.1..

7 BiH ratified the convention on September 1, 1993 by succession..

8 BiH ratified the convention on September 1, 1993 by succession.

9 BiH ratified the convention on February 6, 2007 by accession.

10 BiH ratified the convention on September 1, 1993 by succession.

11 BiH ratified the convention on September 1, 1993 by succession.

- **The guarantee of non-repetition** is enshrined in International Covenant on Civil and Political Rights (Art. 2), Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Art. 2), and International Convention for the Protection of All Persons from Enforced Disappearance (Art. 23).

### **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**

In 2006 the United Nations General Assembly adopted *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*<sup>12</sup> (henceforth the Basic Principles). The Basic Principles provide a framework for the obligations of states in terms of gross violations of international human rights law and serious violations of international humanitarian law. The General Assembly in its resolution further stresses that the Basic Principles “do not entail new international or domestic legal obligations but identify mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law.”<sup>13</sup>

The fundamental obligation, as stated in the Basic Principles, is the obligation to respect, ensure respect for, and implement international human rights law and international humanitarian law. If they have not done so thus far, States are required to ensure that their domestic law is consistent with their legal obligations, through incorporation of the international human rights law and humanitarian law in their domestic law; to adopt appropriate legislative and administrative procedures for fair, effective, and prompt access to justice; to provide for adequate, effective, prompt and appropriate remedies, including reparations; and ensure the protection of victims under the domestic law at the same level as required by international obligations. The obligation to respect, ensure respect for, and implement international human rights law and international humanitarian law also includes appropriate preventive measures against violence; investigation and prosecution against those allegedly responsible; provision of access to justice for the victims irrespective of who the perpetrator might be; and provision of effective remedies, including reparations, to the victims.<sup>14</sup>

According to the Basic Principles, victims’ right to remedies includes:

- **Equal and effective access to justice** – as provided for under the international law or through other means available through domestic administrative and other bodies, mechanisms, modalities and proceedings;
- **Adequate, effective and prompt reparation for harms suffered** – reparations should be proportional to the harms suffered, provided to victims for acts or omissions of either the State or other Entity, and include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.
  - *Restitution* aims at restoring the victims to the original situation before the violation and includes restoration of liberty, exercise of human rights, identity, family life and citizenship, return to one’s place of residence, restoration of employment and return of property;

<sup>12</sup> Resolution 60/147 (2006)

<sup>13</sup> Resolution 60/147 (2006), pg. 3

<sup>14</sup> Resolution 60/147 (2006), pg. 4-5

- *Compensation* should be provided for economically assessable damage including physical or mental harm, loss of opportunities (employment, education, social benefits), material damages and loss of earning, moral damage, costs required for legal or expert assistance, medicine and medical services, and psychological and social services;
- *Rehabilitation* includes medical and psychological care as well as legal and social services;
- *Satisfaction* – ending violations, verification of facts and disclosure of truth, search for the whereabouts of the disappeared and killed, restoration of the dignity of victims through official declaration or a judicial decision, public apology, prosecution of perpetrators, commemorations and tributes to victims, accurate description of the violations that occurred in the educational materials at all levels;
- *Guarantees of non-repetition* – effective control of military and security forces, strengthening the independence of the judiciary, protection of human rights defenders and other professionals working with the victims such as legal, medical and health-care professionals and media, continuous education in human rights, promotion of the observance of codes of conduct by public servants, promoting mechanisms for preventing and monitoring social conflicts and their resolutions, revision and reform of laws.

Violence has a different impact on women compared to men, and its impact also varies within different groups of women. In addition, violence in war that is directed towards women is linked to patterns of gender based violence and systemic marginalization that might exist in the society prior to conflict, requiring that reparations measures link individual reparations and structural transformation. Analyses have also shown that women who experience violence, due to the structural marginalization and patriarchal systems, encounter obstacles in accessing reparations measures.<sup>15</sup> In order to design a mechanism that truly addresses harms committed against women and to devise sustainable and not ad hoc solutions, the mechanism needs to address this double marginalization: that of women being victims during a certain period of time but also address the historical marginalization of women seeking solutions for the advancement of their position.

## 1.2 CIVILIAN VICTIM OF WAR STATUS AND THE STATUS-RELATED RIGHTS<sup>16</sup>

The design of the Reparations Program for BiH will require a thorough and comprehensive analysis of the currently available rights and the access to these rights of the civilian victims of war in BiH (hereinafter: CVW). For the purpose of this publication, our working group made a partial overview of the current situation with the aim to underline the key problems of the system.

### Categories of civilian victims of war

According to the current legislation, civilian victim of war category comprises:

- Persons that have suffered at least 60% bodily damage (in accordance with the Law on the Fundamentals of Social Welfare, Protection of Civilian Victims of War and Families with

<sup>15</sup> See Manjoo, Rashida (2010). *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights including the Right to Development*, UN General Assembly, Human Rights Council A/HRC/14/22.

<sup>16</sup> Since this publication deals exclusively with the civilian victims of war, the working group did not deal with legislation or rights relating to disabled veterans.

Children in FBiH, the Law on Protection of Civilian Victims of War in RS, and the Decision on the Protection of Civilian Victims of War in Brčko District);

- A special CVW category in FBiH and Brčko District are the survivors of sexual abuse and rape during the war (in accordance with the Law on the Fundamentals of Social Welfare, Protection of Civilian Victims of War and Families with Children in FBiH, after 2006 amendments, and the Decision on the Protection of Civilian Victims of War in Brčko District, after 2012 amendments). RS does not recognize victims of sexual abuse or rape as a separate category; therefore they can exercise their rights only if they are able to prove at least 60% bodily damage;
- Families of missing persons (in accordance with the BiH Law on Missing Persons);<sup>17</sup>
- Family members of persons who had been killed in war-related events (FBiH exclusively); in RS and Brčko District, the law/decision on civilian victims of war fail to recognise the status of civilian victims of war to victims' families, but they do recognise the right to family disability pension.

### Note: Prisoners in camps

In case the CVW who have been imprisoned in camps cannot prove the 60% of bodily damage, they are not encompassed by the laws and are not entitled to any of the special legally stipulated social rights.

Some former prisoners managed to obtain the right to compensations through court proceedings against RS and FBiH. Their claims have primarily focused on compensations for non-material damage (on grounds of suffered physical and psychological pain and fear) caused by arbitrary deprivation of liberty and keeping in captivity, and other crimes they experienced during imprisonment.

Many claims have been rejected on grounds of statute of limitations. RS and FBiH case law differed in this regard. While the RS rejected the claims by former prisoners on grounds of statute of limitations, FBiH used to accept them (in accordance with the opinions of the FBiH Supreme Court and BiH Constitutional Court). Since recently, the case law has been changed and FBiH also started rejecting claims by former prisoners applying more restrictive legal interpretation.

According to TRIAL's conclusion, the practice of rejecting claims on grounds of statute of limitations is unjustified in cases of compensations for harms caused by war crimes. This practice is a result of incorrect interpretation of domestic legislation and is contrary to international obligations that bind Bosnia and Herzegovina.

A few years ago, the proposal of the Law on the Rights of Torture Victims was drafted and in 2013 submitted to the House of Representatives of the Parliamentary Assembly of BiH and was rejected.<sup>18</sup> The BiH Ministry of Human Rights and Refugees is currently preparing a new draft.

### Compensations

According to the existing legislation, civilian victims of war are entitled to compensations on grounds of harms caused during the war in form of a social protection measure. Payments to CVWs are in most

<sup>17</sup> **BiH Law on Missing Persons** is only partially implemented. The establishment of the Missing Persons Institute enabled access to certain rights for families of missing persons, such as the right to truth and the right to compensation of burial/funeral costs. Missing Persons Fund was never established and thus it is impossible to access the right to financial compensation, legal aid, and other rights conditioned by the establishment of the Fund.

<sup>18</sup> The Proposal of the Law can be found at: <https://www.parlament.ba/sadrzaj/zakonodavstvo/obustavljeni/default.aspx?id=42830&langTag=bs-BA&pril=b>

cases monthly and regulated by entity and cantonal laws. The only law at state level that regulates compensations related to wartime harms is the Law on Missing Persons in BiH. The payments are not based on the violation of rights, or the damage inflicted, but the disability level (with the exemption of sexual violence victims in FBiH). Entity laws define the amounts of compensations paid to civilian victims of war in relation to disabled veterans:

- FBiH: the individual compensation for a CVW is 70% of the amount allocated to veterans (for the same level of disability)
- RS: the individual compensation for a CVW is 75% of the amount allocated to veterans (for the same level of disability)

In general, disabled veterans exercise their right to compensation with a lower level of disability. The minimum level of disability required from CVWs to be entitled to the right to compensation is 60%, while the minimum level for disabled veterans is 20%.

### Other rights

According to the above laws, CVWs are entitled to other rights as well:

- FBiH: personal disability pension or monthly monetary compensation, compensation for care and help by another person, orthopaedic compensation, family disability pension, assistance in medical treatment and procurement of orthopaedic aid, vocational training (professional rehabilitation, retraining and additional training), priority employment, priority housing, psychological and legal aid.
- RS: civilian disability pension, i.e. family disability pension, compensation for care and help by another person, compensation for a family member incapable of working, additional monetary payments, compensation for single parents, healthcare, professional rehabilitation.
- Brčko District: basic rights - civilian disability pension, family disability pension, compensation for care and help by another person, healthcare and exemption from paying primary and secondary healthcare expenses; orthopaedic compensation, compensation of burial costs; additional rights – procurement of orthopaedic aid, vocational training - professional rehabilitation, retraining and additional training, the right to special employment projects, the right to priority housing, the right to free legal aid.

### Ways to obtain the status

These rights are exercised through administrative procedures. In FBiH, CVWs file a claim to the Centre for Social Work in the municipality where they live or have registered residence. In RS, the claims are filed with the relevant municipal department.

Filing a claim:

- Filing a claim within a legally stipulated time limit (only in RS). The right to the recognition of status in RS was limited by a legal deadline that expired on December 31, 2007.
- Submission of documentary evidence, including medical documents stating the time of the injury, death, disappearance etc.
- Submission of medical reports and opinions of the competent medical commission about the disability level (in FBiH, regulations that define disability levels are adopted by the Federal Minister of Labour and Social Policy; in RS, opinions and reports are provided by a commission competent to examine disabled veterans applying the regulated procedures and methods).

- Survivors of sexual abuse and rape living in FBiH are not obliged to prove the level of bodily injury, but must submit a document stating the circumstances under which bodily injury occurred, which is issued by authorised non-governmental organisation.

Since the rights are exercised as part of the welfare system, it is important to note that they are linked with the place of residence. Victims living outside BiH cannot claim any rights, and if those who have the status of a CVW leave the country for a longer period (more than 3 months) they may lose their rights. This practice is unacceptable in the context of reparations measures.

### *Exercising one's rights in criminal procedures*

The BiH Criminal Procedure Code recognises the possibility for victims of war crimes, as well as other persons with the status of an injured party in criminal procedures, to claim their right to compensation for the damage by filing so-called property claims that courts decide on in the respective judgments. These provisions were applied for the first time in June 2015 when two victims of sexual violence during the war were awarded compensation for harms by the perpetrators. However, in order for such practice to become regular case law certain systemic preconditions must be ensured: providing legal aid for victims, and enabling the prosecutors to take a more active role in terms of collecting facts and evidence needed for decision-making in case of such claims.

### **Inadequate access to reparations in the BiH legislation**

One of the key problems is the unclear position of the status and rights of civilian victims of war – whether they fit in social welfare system or the reparations domain? Every state is obliged to secure social welfare for its socially vulnerable citizens with a view of fighting poverty, ensuring basic income for people unable to work for any reason, such as disability or age. On the other hand, reparations, according to international law, in cases of major violations of human rights and international humanitarian law, require from the states to identify the perpetrators, prosecute and punish them, to undertake prevention measures, and award reparations for the inflicted harm. The purpose of reparations is to ensure satisfaction for the injustice suffered. While social welfare is paid based on state of need and property census, reparations should not be conditioned by these features and should be paid on the basis of a violated right, regardless of the social status of the victim.

There are numerous other problems – inadequate time limits for accessing rights (or time limits in general), conditioning the access to rights by levels of disability, impossibility to implement many of the rights stipulated by law, different levels of rights guaranteed by social protection laws of different entities, and in FBiH also different cantons of residence, etc.

Having in mind the problems victims face in exercising their rights, the working group concludes that in developing the reparations program, the rights that CVWs are currently entitled to may not in any way be contested by the new reparations program. Furthermore, the existing legal solutions, e.g. the Law on Missing Persons, need to be integrated into the program. The right to reparations measures on grounds of violations of international human rights law and international humanitarian law may not limit in any way the access to social benefits provided on the basis of existing needs for social protection.

## 1.3 OTHER COMPLETED AND INITIATED ACTIVITIES IN THE DOMAIN OF TRANSITIONAL JUSTICE, INCLUDING REPARATIONS

Numerous initiatives in the domain of transitional justice were launched after the war. To mention a few:

- *Criminal justice*: establishing special war crime departments at the Court of BiH and the Prosecutor's Office of BiH (2003), adopting the National Strategy for Processing War Crime Cases (2008);
- *Truth-telling*: the first initiative to establish the Truth and Reconciliation Commission (1997), second initiative to establish the Truth and Reconciliation Commission (2005), Commission to Investigate Events in and around Srebrenica from 10 to 19 July 1995 (2003), Commission to Investigate and Establish the Truth on Suffering of Serbs, Croats, Bosniaks, Jews and Others in Sarajevo 1992-1995 (2006), Truth and Reconciliation Commission of the Municipal Assembly in Bijeljina (2008), Law on Missing Persons (2004), regional initiative to establish a Regional Commission for Finding Facts of War Crimes and Other Major Violations of Human Rights Committed in the Wars of 1991-2001 in the Territory of Former Yugoslavia - RECOM; Women's Court – Feminist Approach to Justice (May 7-10, 2015); Regional Coordination of Associations of Missing Persons Families; establishment of the Missing Persons Institute (2005);
- *Reparations*: Strategy for the Implementation of Annex 7 of the Dayton Peace Agreement (2002, revised in 2010); restitution and other measures to facilitate return, abolishment of military service and professionalization of the army, disarmament programs, troops demobilisation and reintegration, amnesty for military deserters of the 1992–1995 war; issuing securities to members of all armies, as well as employees of socially owned companies that have become state owned (securities were of no significant market value, but could have been used to purchase apartments by persons in possession of tenancy rights, and for payment of utilities and similar public sector transactions);
- *Institutional reforms*: police officer certification and reappointment of judges and prosecutors, establishment of the HJPC (2003).

In addition to these initiative and activities, in 2010 the Ministry of Human Rights and Refugees and the Ministry of Justice in BiH, supported by UNDP, formed a task force to develop the state-level *Transitional Justice Strategy* with the aim to ensure a strategic and comprehensive access to mechanisms of transitional justice. In 2012, with the support of UNFPA, the Ministry of Human Rights and Refugees finalised the *Program for Victims of Wartime Rape, Sexual Abuse and Torture and Their Families*. Although both initiatives were led by state-level ministries, they faced a lack of political will for their final adoption and implementation.

A number of civil society organisations, along with their active participation in these initiatives, continuously document and research violations of human rights and war crimes, and provide psychological and health support to survivors and victims witnesses. They monitor war crime trials, offer free legal aid, organise peace education and human rights schools, mark execution places and organise commemorations, and other similar activities.

## PART 2

# PROCESS OF DEVELOPING A REPARATIONS PROGRAM

The working group would like to underline the importance of the process of developing a reparations program that should ensure inclusiveness, transparency, and feasibility of the proposed measures.

## 2.1 PROPOSAL FOR DIFFERENT PHASES OF DEVELOPING AND IMPLEMENTING THE REPARATIONS PROGRAM

The development of a reparations program should be divided into four main phases – the preparatory phase, the conceptual phase, the design phase, and the program implementation phase.

- The **preparatory** phase:
  - Forming a working group with a clearly defined mandate and precisely set time limits;
  - Forming a consultative and an advisory body;
  - Conducting raising awareness campaigns.
- The **conceptual** phase:
  - Defining the process of developing the reparations program (based on a set of predefined principles – please see part 2.2. Proposal of basic principles);
  - Developing a detailed and transparent analysis of existing rights and access to these rights;
  - Defining mechanisms for solving the lack of a single database of different CVW<sup>19</sup> categories and establishing mechanisms for data control and collection, as a precondition for an efficient and adequate program, but also for the purpose of historical records, adequate budget planning, etc.
- The **design** phase:
  - Careful and gender-sensitive defining and listing of harms to serve as grounds for reparations;
  - Careful and gender-sensitive defining of program's beneficiaries, based on previously defined harms;
  - Careful and gender-sensitive defining of reparations measures to meet all the needs of war victims;

<sup>19</sup> It is necessary to establish a kind of mechanism to consolidate data found in databases of different entity and cantonal ministries and institutions, as well as different civil society organisations. We note that existing databases do not apply harmonised data collection methodologies and contain only partial data.



- Continuous involvement of CVWs, by their direct participation in the working group, but also in a consultative and advisory body that will comprise all key stakeholders and future program beneficiaries (it is crucial to include a wide range of people and organisations, improving the former practice of including only the established organisations, since not all victims are organised and not all of them associate with an existing organisation);
- Conduct a gender analysis in order to identify possible problems in the access to reparations measures and their solutions (e.g. whether women have bank accounts).

- The **implementation** phase

- The implementation period must be defined in such a way that it does not place a time limit for the claims for access to reparations measures (no statute of limitations);
- This phase must be based on transparency and full involvement of CVWs, as well as functional, efficient and adequate implementation monitoring mechanisms;
- The implementation phase has to start with a comprehensive raising awareness campaign about the reparations program, informing about eligibility for the program, the rights covered, and similar.

## 2.2 THE PROPOSAL OF BASIC PRINCIPLES

During workshop discussions, the working group identified a range of principles to serve as basis for developing the reparations program and to ensure a comprehensive approach in terms of developing and coordinating the program, guaranteeing the safety of program beneficiaries, and implementing reparations measures that shall truly contribute to the recovery and emancipation of the social fabric.

### **The Principle of Equity**

The reparations program has to be based on a equitable division of (material and nonmaterial) resources that will be made available through the reparations program.

### **The Principle of Equality**

In the development of the reparations program, all participants need to be entitled the equal right to participate, i.e. everyone's vote has to be of equal importance (be it the representatives of government bodies or CVWs/civil society).

### **The Principle of Gender Equality**

All phases of the development and implementation, the composition of the working group and other bodies working on the program, as well as the results of their work have to be gender-sensitive and contribute to structural and transformative changes in the society aimed at establishing full gender equality.

### **The Principle of Inclusiveness and Representation**

Throughout the various phases and aspects of design and implementation process of the reparations program it is necessary to ensure complete, meaningful, and effective inclusiveness of all categories of civilian victims of war and other key stakeholders of this process, especially women and their wartime experiences and harms they suffered (*please see Annex 1 for further information*). The principle of

inclusiveness and representation refers also to the recognition of all wartime harms and experiences that currently might be unrecognised and to ensuring adequate reparations measures for those harms. Wartime and war-experience related harms not necessarily fitting in the war timeframe (dated before or after the official start and end dates of the war) must not be formally and automatically rejected but thoroughly considered and decided on a case-by-case basis (taking into account the circumstances and consequences of the harm).

### **The Principle of Transformative Reparations Measures**

Reparations, if they have an explicit gender dimension, have strongest transformative potential for women of all the transitional justice mechanisms. The traditional understanding of reparations, and the final goal of this mechanism, is to return the victim, to the extent possible, to the state before the harm occurred<sup>20</sup> (restitution). However, violence against women during conflict has to be seen and understood as something closely related to violence against women in general and their subordinated social position prior to the conflict, which is aggravated in violent circumstances such as war. In this context, the understanding of reparations has to transcend the traditional idea and focus on the transformative potential of this mechanism. "Reparations should aspire, to the extent possible, to subvert, instead of reinforce, pre-existing structural inequality that may be at the root causes of the violence women experienced before, during and after the conflict".<sup>21</sup> Subsequently, the principle of transformation should also relate to all categories of individuals in socially unequal positions (as is the case the LGBT and Roma populations).

### **The Principle of Transparency**

In the development and implementation of the reparations program, the citizens of BiH, and CVWs in particular, have to have a full and timely insight into the decision-making process relating to the program. CVWs and other stakeholders should be provided with adequate and efficient mechanisms to influence the decision-making process and thus contribute to the creation and implementation of the program.

### **The Principle of Confidentiality**

Any kind of documenting of crimes with the purpose of reparations must be based on clear and reliable confidentiality standards, privacy protection rules, and general sensitivity to victims' needs. All information (oral or written) collected during the course of program development and implementation (in the context of gathering information related to harms and rights violations that might put the informant in danger or expose him/her to social stigma) has to be kept highly confidential unless differently agreed with the person providing the information. Any sharing of information collected during this process that goes beyond the mechanism for program development and implementation may happen only with prior written permission of the informant. CVWs and other information providers have to be familiar with the confidentiality principle during the first contacts in order to make an informed decision about providing information.

### **The Principle of Clear and Transparent Data Collection Methodology**

During program development, when collecting data, only data based on facts may be used. In BiH today there is a practice of widespread use of various information, some originating from serious and expert analyses, while some are highly unverified (and unfortunately used as official). Based on the transparently defined methodology, developed in line with clear definitions of harms, all the information and data must be collected, verified, and systematised.

20 A specific characteristic of the most serious violations of human rights and humanitarian law is that the damage they result in is by its nature irreparable.

21 Manjoo, Rashida (2010: chapter 32). *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights including the Right to Development*, UN General Assembly, Human Rights Council A/HRC/14/22.

## PART 3

# CONCEPTS AND BASIC ELEMENTS OF THE REPARATIONS PROGRAM

In this section, the working group provides its proposal of harms that should be covered by the reparations program, categories of beneficiaries, and the proposal of framework reparations measures.

The section first lists the beneficiary categories that arose from the discussion on harms. It is followed by overview of all identified harms with proposals of basic elements for their definitions. Given that many reparations measures, as identified by the working group, apply to several or all harms, we grouped them as general measures and included them after definitions of harms. However, this section should be read together with Annex 2 providing additional comments for every harm that explain the working group logic, lists beneficiary categories and provides specific reparations measures in relation to every harm.

In identifying reparations measures, the working group relied on **5 basic reparation forms**<sup>22</sup> that arise from the Basic Principles.<sup>23</sup> Also, during the discussions we addressed the issue of individual, as well as collective symbolic and material measures. We were also guided by the principle that no existing CVW category may lose the previously acquired rights.

**Note #1** – We think that the reparations program should encompass the period from the beginning of 1991, following the logic of Dayton Peace Agreement (Annex VII), as well as the post-war period in cases of harms inflicted as consequence of war (e.g. mine victims or victims of individual or collective violence directly related to war).

**Note #2** – Pursuant to the Basic Principles, states are obliged to ensure compensations to victims and families of victims, irrespective of who the perpetrator is, or his/her side during the war. In the BiH context, it is important to include harms inflicted by members of the UN peacekeeping forces and other individuals/institutions/organisations that violated rights and enjoy immunity from criminal prosecution, or are exempt for other reasons. Victims of such harms have not been able to exercise any rights to-date.

**Note #3** – Numerous BiH citizens who fled the country and face difficulties in accessing rights must be included in the reparations program, because it should provide mechanisms for reparations based on violations of the international humanitarian law and the international human rights law, irrespective of the beneficiary's place of residence or financial status.

<sup>22</sup> Restitution, compensation, rehabilitation, satisfaction, and guarantee of non-repetition.

<sup>23</sup> UN GA Resolution 60/147

## 3.1 BENEFICIARIES OF THE REPARATIONS PROGRAM

Once the working group defined harms inflicted as a consequence of violations of rights of citizens of Bosnia and Herzegovina we identified six groups or categories of beneficiaries of the reparations program.

The working group would particularly like to underline the mutual connections between harms, because CVWs often suffered multiple harms and a person might recognise him/herself in several or all listed categories.

Six identified categories of beneficiaries are as follows:

1. Persons who suffered physical and mental harm, individually and/or as a part of a group;
2. Persons who suffered (economically assessable) material losses and loss of income (including potential earnings) individually and/or as a part of a group;
3. Individuals or groups that suffered non-material damage;<sup>24</sup>
4. Persons who suffered harms to their physical and psycho-physical, social, gender, sexual, reproductive and similar integrity, dignity, autonomy and self-determination, individually and/or as a part of a group;
5. Persons who became victims of lost opportunities (including lost opportunities for education, employment, social protection and alike), individually or as a part of a group;
6. Persons who suffered, individually or as a part of a group, economic damage due to expenses of legal representation, medical treatment, psychological counselling and alike, as a result of a suffered harm, or any other damage in access to, and exercise of rights.

## 3.2 HARMS AND RIGHTS VIOLATIONS – BASIC ELEMENTS OF THE DEFINITION

*Please see the detailed explanations of each harm, enclosed in Annex 2.*

**Note:** The use of term “perpetrator(s)” in the proposals of harms included in this document refers to:

- Military and police forces,
- Para-military units,
- Foreign soldiers such as mercenaries or members of other countries’ armies,
- Representatives of institutions vested with public authorities,
- Any other private person, and
- Any other non-state actors.

<sup>24</sup> In some documents, such as the UN basic principles on reparations E/CN.4/2005/L.48, non-material damage is also called “moral damage”, and it includes loss of a loved one, suffered pain and suffering due to loss of a loved one, and violation of the right to a home and private life.

## **P1** Torture, other forms of cruel and inhuman treatment and outrages upon personal dignity

*Proposal of basic elements of the definition:*

Torture, other forms of cruel and inhuman treatment and outrages upon personal dignity consist of the infliction of physical or mental pain or suffering for purposes of obtaining information, punishment, intimidation, coercion, or humiliation, including infliction having no specific purpose. These acts can be committed by perpetrators who acted with or without explicit support or acquiescence, or upon encouragement by an official.

## **P2** Imprisonment

*Proposal of basic elements of the definition:*

Imprisonment means any form of detention or deprivation of physical liberty contrary to fundamental rules of the international law, including, but not limited to, detention in camps, prisons and other private or public facilities and premises, as well as other places.

## **P3** Slavery and forced labour

*Proposal of basic elements of the definition:*

Slavery means any unlawful deprivation of liberty with the intent to reduce the person to slavery-like conditions, which implies absolute disposal of person's life, personal and reproductive integrity, disposal of economic and non-economic gains resulting from captive's labour, exploitation of the person, disposal of person's time, and exercising any or all of the powers attaching to the right of ownership.

## **P4** Enforced disappearance

*Proposal of basic elements of the definition:*

Enforced disappearances include any action of arrest, detention, abduction or any other form of deprivation of liberty of persons against their will, after which all traces of the persons get lost, followed by a refusal to give information on the fate or whereabouts of those persons. The harm also includes persons who disappeared while escaping war or in other similar situations, and whose families have no information or findings about their fate or whereabouts. Enforced disappearances also include a situation where one's fate remains unknown following killings and mass executions.

## **P5** Rape and other forms of sexual violence

### *Proposal of basic elements of the definition:*

This harm includes any form of sexual coercion, i.e. any violence of a sexual nature.\* It includes physical and psychological acts of sexual nature committed against a person in coercive circumstances, as well as forcing a person to perform such acts on a third person. Any coercive act of sexual nature, attempt to commit acts of sexual nature under coercion, sexual harassment, human trafficking, abuse of position of power to coerce a person to sexual acts, or any other abusive act against one's sexuality, irrespective of family or other type of relation with the victim, shall also constitute this harm.

\* Regardless if the perpetrator is a member of enemy or "friendly" army.

## **P6** Death

### *Proposal of basic elements of the definition:*

This harm includes all actions that resulted in forced deprivation of life, as well as death of a person caused by consequences of war.

## **P7** Bodily and mental injuries

### *Proposal of basic elements of the definition:*

Bodily and mental injuries include pain, suffering, and injuries inflicted to the body, the physical, mental, or reproductive health, or the integrity of a person.

## **P8** Forced displacement and exile

### *Proposal of basic elements of the definition:*

This harm includes all persons who, under coercion, fear or due to the lack of living conditions and the general inability of the state to protect their right to life and dignity, were forced to leave BiH or who were displaced within the borders of BiH. The harm encompasses persons with or without the ability to temporarily or permanently return to their pre-war residence, as well as persons forced by displacement to temporarily or permanently live in inhumane and degrading circumstances.

## **P9** Seizure, destruction and/or damaging of movable and immovable property

*Proposal of basic elements of the definition:*

This harm includes unlawful, arbitrary and forcible seizure, appropriation, confiscation, usurpation, plunder, destruction and/or damaging of private movable and immovable property.

## **P10** Siege

*Proposal of basic elements of the definition:*

This harm includes all locations (city, village, local community, etc.) subject to military blockade, which deprived the civilian population of ability to exercise their fundamental human and other rights.

## **P11** Forced identity change

During workshop discussions, we addressed the harm of forced identity change, which unlike the *imposition* of certain religious, gender, ethnic and other identities, was reflected in the *de facto* change of one's name. The most frequently used example during the discussions was placing 46 children in foster care in Italy. The children had been in the state care system when the war broke out (Bjelave Children's Home) and had been taken to Italy during the war (June 1992) after which they completely disappeared. There is a judgement of the Human Rights Chamber BiH.\* in relation to this harm. Another example that surfaced during the discussions was the one of children found by military, paramilitary or other armed persons or civilians, whose parents or custodians had been killed or abducted, after which the children also disappeared.

However, all our findings are general and anecdotal, especially about children who were abducted after their parents or custodians had been killed. We need much more information to be able to develop a proposal of basic elements. At the same time, we do not want to neglect this harm, as we believe that it needs to be included in the reparations program, but this topic must undergo a detailed research first.

\* HRC Case no. CH/03/14688 at the CC BiH et al.

## **P12** Violation of social, economic and cultural rights

*Proposal of basic elements of the definition:*

This harm includes all forms of human rights violations with regard to employment, social security, family life, participation in cultural life, access to clean water, adequate nutrition, adequate housing, healthcare and education. This harm includes deprivation of running water, food, electricity, heating, communications and similar. It also includes all forms of violations of these rights not only in the context of war but also the post-war period, whenever the violation can be connected with the war.

## P13 Forced militarization of society

### *Proposal of basic elements of the definition:*

This harm includes all acts that resulted in the destruction of the entire BiH social fabric, including ethnicization of society, destruction and plundering of social, economic, and ecological systems and resources, as well as of political organisations, distortion of secular social principles, introduction of misogyny, chauvinism, homophobia, nationalism, racism, militarism and fascism into everyday life, removal of mechanisms for peaceful resolution of social conflicts, and arming and mobilising individuals and groups with the aim of bringing the society to a state of war.

## 3.3 GENERAL REPARATIONS MEASURES

The working group discussed in general possible specific and general reparations measures. In view of the mentioned need for detailed, comprehensive, systematic and gender-sensitive analyses of rights violations and their documenting, the working group, with the limited time and resource, believes it is unable to propose precise reparations measures, but it can offer framework categories of reparations measures arising from the defined harms.

What follows is a range of, as we call them, general reparations measures. Harm specific measures can be found in Annex 2 that provides additional information.

### **Compensation (financial compensation for material and non-material damage)**

Compensation has multiple functions. It primarily helps survivors and their families in facing the material aspects of their loss. Individual compensations can bring immediate economic relief in the lives of survivors and enable them to access the fundamental human needs. Also, a particularly important compensation aspect is the *acknowledgement*, i.e. acknowledgement of violations of rights and reinstating the dignity of survivors.

Although aware of BiH's extremely difficult financial situation, we believe that this form of reparations is inevitable for a number of civilian victims of war who are put in an extremely unfavourable social and economic position, due to gravity of the harm (mental or physical) and extremely poor or non-existent mechanisms for social, health and other forms of rehabilitation. Accordingly, monthly or one-off compensations should be offered for the following harms:

- Torture, other forms of cruel and inhuman treatment and outrages upon personal dignity,
- Imprisonment,
- Slavery and forced labour,
- Enforced disappearances,
- Rape and other forms of sexual violence,
- Death,
- Bodily and mental harm,



- Forced displacement and exile – for internally displaced persons still living in collective centres.

One-off compensations should also be provided in the context of seizure, destruction and/or damaging of movable and immovable property:

- To those whose property was damaged or destroyed and for which they failed to obtain any compensation or receive any donor funds for reconstruction,
- To those who were unable to reclaim their property for any reason and have not obtained any alternative accommodation.

## Rehabilitation

Rehabilitation means provision of social, health and psychological care and legal aid to civilian victims of war. This form of reparation applies to a large number of CVWs, given that the majority of harms caused a need for high-quality and specialized social care, healthcare, as well as psychological and legal assistance to be provided by the state and its bodies. This type of services remained to a large extent not provided for. In the context of the late adoption of a comprehensive and gender-sensitive reparations program (it has been 20 years since the end of the war), rehabilitation measures must be precisely and adequately formulated in order to meet the different needs of survivors and their families (depending on the harm they suffered). Measures must also be implemented as soon as possible in order to quickly mitigate the consequences of suffered harms and prevent, or at least alleviate, transfer of trauma to family members and younger generations.

Some of the rehabilitation-related measures the working group deems absolutely necessary are:

- Universal health insurance and a functional and adequate healthcare for all citizens of BiH (having in mind harms such as violation of social, economic and cultural rights and forced mobilization of the society that affected the majority of BiH citizens);
- Within the universal health insurance, provide CVWs with enhanced rights to specialised services needed due to war-related harms, such as access to adequate and professional psychological support throughout BiH (trained to treat various forms of trauma caused by harms – e.g. imprisonment or torture imply needs for psychological support different than those of families of missing persons); different forms of specialised medical interventions; specialised reproductive health services such as in vitro insemination (particularly important for survivors of rape and other forms of sexual violence); specialised orthopaedic services, etc.;
- Establishment of reproductive health counselling centres in local clinics with staff trained to work with victims of the rights violations that threaten their reproductive health;
- Capacitating mental health centres to work with different forms of war trauma, by providing sufficient human resources, adapting the premises and providing access to these services throughout BiH;
- Capacitating centres for physical therapy to work with different forms of war trauma, by providing sufficient human resources, adapting the premises and providing access to these services throughout BiH;
- Establishment of mechanisms for the provision of additional support to families of trauma survivors (support in children's upbringing and education through various forms of tutorship, psycho-social support and other forms of integration mechanisms). This measure applies to

numerous harms where survivors frequently transfer their trauma to children;

- Provision of adequate housing for civilian victims of war who failed to resolve their housing problem or have resolved it inadequately (e.g. persons whose special needs have not been met);
- Establishment of functional referral mechanisms at the local community level, able to refer an individual within the system of social, health and legal protection (including specialized non-governmental organisations);
- Financial or other type of support for associations that bring together civilian victims of war or informal groups of citizens that support one another and or organisation of self-help programs<sup>25</sup>;
- Infrastructural adaptation to make adjustments for persons having physical, sensory or mental disabilities (access ramps, elevators, sidewalks, etc.);
- Establishment of a mechanism to train, additionally qualify or re-qualify trauma survivors to enable a facilitated access to (self)employment and/or social engagement and integration into all life spheres.
- Provision of free-of-charge medical spa treatments for CVW.

**Note:** Having in mind the need for specific health and legal services, faculties of law and medicine, for instance, should be encouraged to motivate and facilitate students to specialise in these areas.

## Restitution

Restitution-related measures apply to reinstatement of original condition and can include the right to return to the pre-war place of residence, right to identity, family life and citizenship, reinstatement to work etc. These measures mostly relate to harms of forced displacement and exile and to seizure, destruction and/or damaging of movable and immovable property.

In the context of the right to return and reclaim property, some of the proposed measures are:

- Absolute prohibition of discrimination against returnees on all grounds and in all segments of their rights;
- Specially designed measures for more efficient integration of returnees and expedited and adequate resolution of housing problems that internally displaced persons face (through a transparent process that will include internally displaced persons from the onset);
- Accelerated and efficient mechanism of property return to all persons that failed to exercise their right to property return, combined with the above mentioned compensation measures;
  - In situations when property return is hampered due to disappearance or destruction of cadastre books, provide legal aid and ensure necessary legal amendments to facilitate the access to property.

Having in mind the overall destruction of the BiH society, including also the partial or full destruction of factories, it is difficult to imagine reinstatement to pre-war employment as one of the reparations measures. Instead, the first step should be the reconstruction of the economic infrastructure. Revitalisation of the destroyed economy should provide an opportunity to reclaim the lost right to work; the desired

<sup>25</sup> Self-help groups can take the form of both formal and informal gatherings, provision of psychological support, organising bazaars and alike.

place of residence must be taken into account in this regard.

Restitution measures must include also the harm of forced identity change (violation of the right to family life). As this document does not provide the basic elements of the definition, as was explained earlier in the text, we believe that this harm must be thoroughly researched and defined first and only then can the adequate reparations measures be proposed.

### **Satisfaction and guarantees of non-repetition**

Satisfaction and guarantees of non-repetition include a range of measures to determine facts and reveal the truth, as well as the search for missing and killed persons, restoring dignity to victims, public apologies, prosecution of perpetrators, reforms of the judiciary and other important sectors – all with the aim of providing mechanisms that can contribute to higher security of citizens in terms of non-repetition of violence and emancipation of society.

BiH already implemented some of these measures,<sup>26</sup> although not necessarily at a satisfactory level. The working group proposes a set of measures that imply amendments to relevant laws, improvement of the education system, truth-telling, prosecution of war crimes, etc.:

- Adopt necessary amendments to laws on social protection, to enable all persons in need for social protection to exercise this right without impediments;<sup>27</sup>
- Make sure that the state carries the burden of proof in processes of recognizing the status of a civilian victim of war (when accessing some of the rights conditioned by CVW status) as well as enable submission of the papers throughout the country and not only in its central cities;
- Provide compensations to persons who suffered economic damage, individually or as a part of a group, due to court and administrative procedures in the context of exercising CVW rights – e.g. costs for medical treatment, psychological counselling and alike, incurred as a result of suffered harm or any other damage in the context of accessing their rights (in view of the fact that, over the past 20 years, the state of BiH did not provide adequate access to psycho-social and health support, legal aid or other necessary services, a compensation must be provided for costs incurred in the process of attempting to exercise those rights);
- Prosecution of perpetrators and introduction of adequate witness protection and support measures (related to harms that imply criminal liability);
- Prohibition of financing the defence of indicted war criminals from public funds (except for fair trial obligations, e.g. Article 6 of the European Convention on Human Rights);
- Punishment of war profiteering and profiteering related to consequences of war and corruption (without statute of limitations and with measures to confiscate proceeds of crime);
- Establish court practice to award compensations in criminal procedures – trials for crimes committed – and compensation collection system (direct collection from the perpetrator);
- Introduce CVWs into existing laws on free legal aid and ensure mechanism of free legal aid provision to all CVWs in areas where a law or functional free legal aid centres do not exist;

<sup>26</sup> Such as, for example, establishing control over military and security forces, disarmament, strengthening the independence of judiciary and alike.

<sup>27</sup> Radna grupa smatra da su izmjene ovih zakona apsolutno neophodne kako bi se promijenila situacija u kojoj se trenutno civilnim žrtvama rata otežava pristup mnogim pravima iz domena socijalne zaštite, kao npr. pristup dječijem doplatku, zato što ostvaruju primanja na osnovu statusa ČZR. Ni u kom slučaju ne smije doći do isključivanja civilnih žrtava rata iz prava socijalne zaštite zato što osoba prima mjesečnu naknadu ili je primila jednokratne kompenzacije. Jedan od razloga trenutne situacije jeste neprohodnost i komplikovanost sistema socijalne zaštite.

- Sensitization and training of staff in the administration and other public institutions to work with CVWs and establishment of efficient mechanisms for filing complaints against staff members;
- Efficient and accelerated prosecution of persons suspected of assaults and threats against human rights defenders (including representatives of war related victims' associations), and imposition of stringent sanctions;
- Reform higher education with the aim of producing qualified staff to work with CVWs in different fields (e.g. faculty of law – focus on international criminal law and international human rights law; faculty of medicine – specialising in physical and mental harms typical for CVWs; faculty of political science, department for social work, and similar);
- Establishment of mechanisms to guarantee scholarships, free access to education, additional qualification and re-qualification programs, and priority employment of CVWs and their children;
- Introduce mandatory courses on women's rights and gender equality, including facts about past events (background, causes and consequences) in formal and informal education, as well as the curricula at police and military academies, faculties of political sciences (particularly social work departments), faculties of law and medicine and other relevant educational institutions;
- Forming of a truth commission on harms, rights violations and wartime events in general that will result in, *inter alia*:
  - Publishing of a formal report on all events during the war,
  - Integration of the fact established by the commission in formal and informal education,
  - Establishment of mechanisms for the creation of apolitical culture of remembrance with an all-inclusive narrative (by establishment of adequate memorials and official commemorative activities, along with full inclusion of relevant CVW categories thereon; cultural and social programs, and similar),
  - Prohibition of any denial of facts established by the commission.
- Adoption of a law on establishment of memorials and organising commemorative activities that would harmonise this practice in BiH, facilitate and simplify procedures of memorial placement and prohibit construction of fascist and war-mongering memorials;
- Destruction of illegal weapons and intensified efforts at complete demining;
- Establishment of an efficient gender equality mechanism in all public institutions, including mandatory gender-responsive budgeting in all institutions (as a long term principle);
- Public apology by Presidency Members or the Chairperson of Council of Ministers, or some other adequate public institution, for crimes committed during the war and continued violations of CVW's rights in the post-war period (i.e. failure to ensure administrative and legal remedies).

# ANNEXES

## ANNEX 1: FULL, MEANINGFUL AND EFFICIENT INCLUSION OF WOMEN

Inclusion of women in the different phases of development of reparations program can have multiple positive effects on successful implementation of the reparations measures – 1) it will be less likely that the measures will reflect men’s experience of violence and what they consider to be priority with regard to redress (as is often the case); 2) the victims will avoid being identified as ‘just’ victims without a sense of agency and will be perceived as agents of change; 3) an inclusive approach can open up space for women to not only discuss but also advocate and press for structural reforms that can positively transform their position in the society.

A full understanding of the harms suffered calls for a meaningful and effective inclusion of women in the creation of any reparations policy through, for example, consultations with formal and informal women’s groups that gather women survivors, women’s rights organisations, women activists, civil society organisations working on women’s issues etc. However, meaningful and effective inclusion of women does not only entail consultations with the above groups but their real ownership over the processes, and mechanisms to influence decision-making, outcomes, as well as implementation itself.

Another important approach towards creating gender-sensitive reparations programs along side consultations is of course having not only formal but substantive and meaningful representation of women in different transitional justice bodies and mechanisms, as well as throughout different phases of developing a program to redress victims. The representation of women in these bodies should stretch from employees, members of commissions, women in decision-making and chairing positions, through collection of women testimonies etc.

One should be cautious about the presumption that women’s representation in different bodies necessarily means that they are in a position to make or influence decisions or that they are representing interests of a broad spectrum of women or that they demonstrate gender-sensitivity. Many times women in different positions find themselves in situations where they have to represent different political or other interests. If transitional justice bodies are truly to be able to succeed in integrating gender, all stakeholders and participants must be gender sensitised, competent, and have sufficient capacities.

### **Definition of harms and forms of redress**

The first step in creating a reparations mechanism that is truly transformative is to have a full understanding of the harms suffered by women and men, and to have that understanding both context-specific and gender-sensitive. Comparative analyses show that many countries have used a narrow understanding of violence that targets or affects women, usually they are closely related to sexualized violence (rape, sexual slavery, forced impregnation, forced abortion etc.) leaving out many of the harms suffered by women that are not necessarily of sexual nature such as internal displacement, damage of property or

its seizure, enforced disappearance, deprivation of education or employment opportunities, etc. Also present is the poor understanding of gender dimensions of harms traditionally suffered by men, such as enforced disappearances.

Many times countries have failed to understand that even when women suffer from the same violations as men the effects and consequences of these violations may differ due to pre-existing socio-economic, legal or even cultural status assigned to women and men or that crimes committed against male family members greatly affect women.<sup>28</sup>

If men are the main actors in defining harms, women's experience will be left out. However, even when we ensure women's experience in the definitions of harms, reparations measures will not automatically be gender sensitive. Women's experience must be integrated in the overall process, from the definitions of harms to the development of reparations measures. When developing reparations measures, we must make sure we understand what type of compensation women find adequate to meet their specific and immediate needs, but also their strategic requests that shall have a transformative effect on the general position of women in society, and thus the overall society as well.

### Access to reparations measures

In accordance with the international legal framework, the obligation of the state to provide adequate reparations to victims of violence means that states are also obliged to adopt appropriate and effective legislative and administrative procedures so that the access to both criminal and civil remedies is fair, affective and prompt. The third supporting block towards the creation of gender-sensitive reparations program is thus attentiveness to potential cultural, procedural, legal, and economic (or similar) obstacles that victims can encounter in their attempts to access reparations measures created for their redress. Special Rapporteur on Violence against Women writes that in particular women's access to reparations that are meaningful and effective can depend more on procedural hurdles than on the content of the reparations measures themselves.<sup>29</sup>

A careful analysis of the context within which women will be accessing the reparations measures must be done, in order to detect pitfalls such as lack of necessary documentation, unequal or unavailable access to bank accounts through which potential compensations would be paid out, lack of entitlements to ownership of property when restitution of property is discussed etc. For example, if an analysis should show that women would not gain from measures aiming at restitution of property because they are not entitled to ownership of property to begin with, then gender-sensitive reparations measures must be created in such a way that they advance the social and economic position of women in a society by, for example, changing laws towards enabling women to own property.

When discussing the accessibility to reparations measures one must think of the time window as well. For many harms suffered, fast implementation of reparations measures should be a goal; however, looking from the perspective of women, especially those that have survived sexualized violence, any gender-sensitive reparations program must keep in mind that for some types of harms, such as rape or other forms of sexual abuse, it might take years before the victims are ready to speak out, or access the measures, depending on their psychological and physical state of being. Hence, a more long-term plan needs to be devised in order to make sure that these reparations measures are accessible for women years after the reparations program has been created.

28 For further reading see Goldblatt, B. u Rubio-Marín, Ruth ed. (2010). *What Happened to the Women? Gender and Reparations for Human Rights Violations*; and Manjoo, R. (2010). *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights including the Right to Development*, UN General Assembly, Human Rights Council A/HRC/14/22.

29 For further reading see Manjoo, R. (2010). *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights including the Right to Development*, UN General Assembly, Human Rights Council A/HRC/14/22.

## ANNEX 2: PHARMS AND VIOLATIONS OF RIGHTS – COMMENTS AND EXPLANATIONS

### P1 TORTURE, OTHER FORMS OF CRUEL AND INHUMAN TREATMENT AND OUTRAGES UPON PERSONAL DIGNITY

*Proposal of basic elements of the definition:*

Torture, other forms of cruel and inhuman treatment and outrages upon personal dignity consist of the infliction of physical or mental pain or suffering for purposes of obtaining information, punishment, intimidation, coercion, or humiliation, including infliction having no specific purpose. These acts can be committed by perpetrators who acted with or without explicit support or acquiescence, or upon encouragement by an official.

*Additional comments and explanations:*

- P1.1 This harm **includes but is not limited to** physical and psychological abuse (battering with hands or objects, starvation, deprivation of medical treatment, forcible social isolation and deprivation of the right to information, forcing persons to watch murder, torture, rape, and other forms of inhuman and degrading treatment of other persons, particularly relatives etc.); random abduction of people (from public places or homes) to forced labour such as trench digging; threats; forced blood and organ collection for treatment of other persons, or other purposes; rape and other forms of sexual abuse etc.
- P1.2 Consequences of torture and other forms of cruel and inhuman treatment go way beyond the direct pain caused by torture and leave long-term scars and injuries, such as reduced quality of life due to psycho-somatic illness, reduced work capacity as a consequence of physical and psychological injuries, health consequences, including reproductive health, and similar.
- P1.3 Prohibition of torture and other forms of cruel and inhuman treatment, as well as prohibition of violation of personal dignity of civilians *hors de combat* can be found in the common Article 3 of the Geneva Conventions, as well as specific articles in all four Geneva Convention; the Statute of the International Criminal Court treats “torture or inhuman treatment”, as well as “intentional causing of great suffering, or serious injury to body or to mental or physical health” as a war crime.<sup>30</sup>
- P1.4 Prohibition of torture and other forms of cruel and inhuman treatment, as well as violation of personal dignity, is prescribed by national legislation of numerous countries and has been confirmed by international case law. In the Furundžija and Kunarac cases, the International Criminal Tribunal for the Former Yugoslavia established a practice of prohibiting torture both in international and internal armed conflicts.<sup>31</sup>
- P1.5 Prohibition of torture and other forms of cruel and inhuman treatment can be found in the Convention against Torture, numerous general human rights agreements as well as in specific

<sup>30</sup> [https://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule90](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule90)

<sup>31</sup> Ibid.

agreements intended for prevention and sanctioning of these acts.<sup>32</sup>

- P1.6 Elements of Crimes of the International Criminal Court state that war crime of “torture” includes “severe physical or mental pain or suffering” with the purpose of “obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind”.<sup>33</sup> Contrary to human rights law (e.g. contrary to Article 1 of the Convention against Torture) Elements of Crimes do not require that pain or suffering be inflicted “by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”. In the Delalić case and Furundžija case, ICTY found the definition contained in Article 1 of the Convention against Torture to be part of customary international law applicable in armed conflict. However, in the Kunarac case the ICTY concluded that the definition of torture under international humanitarian law does not comprise the same elements as the definition of torture generally applied under human rights law. The Tribunal held that the presence of a state official or any other authority-wielding person in the torture process is not necessary for the offence to be regarded as torture under international humanitarian law. In this case, the Tribunal defined torture as the intentional infliction, by act or omission, of severe pain or suffering, whether physical or mental, in order to obtain information or a confession, or to punish, intimidate or coerce the victim or a third person, or to discriminate on any ground.<sup>34</sup>
- P1.7 Elements of Crimes of the International Criminal Court define “inhuman treatment” as inflicting “severe physical or mental pain or suffering”. The element that distinguishes inhuman treatment from torture is the absence of the requirement that the treatment be inflicted for a specific purpose. ICTY expanded the definition determining that inhuman treatment is that which “causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity”. The element of “a serious attack on human dignity” was not included in the definition of inhuman treatment under the Elements of Crimes for the International Criminal Court because war crime of “outrages upon personal dignity” covers such attacks.<sup>35</sup>
- P1.8 Elements of Crimes of the International Criminal Court define outrages upon personal dignity as acts which humiliate, degrade or otherwise violate the dignity of a person to such a degree “as to be generally recognized as an outrage upon personal dignity”. The Elements further specify that degrading treatment can apply to dead persons and that the victim need not be personally aware of the humiliation. European Commission of Human Rights defines degrading treatment as treatment or punishment that “grossly humiliates the victim before others or drives the detainee to act against his/her will or conscience”.<sup>36</sup>
- P1.9 **Gender dimension:** Torture has “traditionally” been considered a crime committed mostly against men and therefore in most cases services and support mechanism were based on working with men (e.g. PTSD diagnosing). In the context of BiH, women were provided support in relation to their experiences of sexual violence so that women survivors of torture or inhuman and degrading treatment, who have not been subjected to sexual violence, are often excluded from support. On the other hand, sexual violence committed against men is exclusively treated as torture, without raising concerns about their sexual health..

32 Universal Declaration of Human Rights – No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 5); All human beings are born free and equal in dignity and rights (Article 1); Everyone is entitled to all the rights and freedoms (Article 2); Everyone has the right to life, liberty and security of person (Article 3); No one shall be held in slavery or servitude (Article 4). Furthermore, Article 7 of the International Covenant on Civil and Political Rights stipulates that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. International Convention on the Rights of the Child - No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment, Article 37 (a).

33 Elements of Crimes, definition of torture as war crime, Statute of the International Criminal Court, Article 8(2)(a)(ii) and (c)(i).

34 Ibid.

35 Ibid.

36 Ibid.



### Proposed beneficiaries

1. Persons who suffered physical and psychological harms individually and/or as a part of a group;
2. Persons who suffered harms to physical and psycho-physical, social, gender, sexual, reproductive and similar integrities, dignity, autonomy and self-determination, individually and/or as a part of a group;
3. Persons who became victims of lost opportunities (including missed opportunities for education, employment, social protection and alike), individually or as a part of a group;
4. Persons who suffered, individually or as a part of a group, economic damage due to expenses of legal representation, medical treatment, psychological counselling and alike, as a result of a suffered harm, or any other damage in access to, and exercise of rights.

### PROPOSAL OF (SPECIFIC) REPARATIONS MEASURES - addition to general measures

- Compensations;
- Ensured access to rehabilitative measures – *for the full list of rehabilitative measures please see the General measures;*
- Complete prohibition of torture.

## P2 IMPRISONMENT

### *Proposal of basic elements of the definition:*

Imprisonment means any form of detention or deprivation of physical liberty contrary to fundamental rules of the international law, including, but not limited to, detention in camps, prisons and other private or public facilities and premises, as well as other places.

### *Additional comments and explanations:*

- P2.1 Imprisonment as the loss of right to free movement implies other types of harms: inability to function normally, missed education and employment opportunities, lack of access to healthcare, inability to meet basic needs, starvation, separation of families, loss of opportunities to participate in social life, isolation and loss of communication, lack of access to information, and the general deprivation and denial of all human and other rights. Imprisonment was often followed by torture, starvation, sexual violence, and other forms of psychological and physical abuse leading to severe physical and psychological consequences for victims.
- P2.2 This harm **includes but is not limited to** imprisonment in camps, private houses, public buildings or spaces, and in other places (both open and closed); arbitrary arrests and detention contrary to legal proceedings or in line with “legal” proceedings when laws and procedures are contrary to international humanitarian law and human rights in general; imprisonment with special purpose, such as rape or to serve military units (cooking, cleaning and other domestic work), performance

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of special work duties, using captives as human shields; restrictions of movement within a given area (e.g. in villages or towns under siege), and similar.

P2.3 Prohibition of arbitrary deprivation of freedom can be found both in national legislation and international human rights law – European Convention on Human Rights, Article 5 (1); International Covenant on Civil and Political Rights, Article 9 (1) – right to liberty and security; International Convention on the Rights of the Child, Article 37 (b), and similar. These documents recognize the right to liberty and security of person, stressing that no person may be deprived of his or her right to liberty, except in situations regulated by law.

P2.4 **Gender dimension:** The number of women, men and children who had been held captive in camps, private houses and in other conditions is still unknown. We know from court judgments and various forms of testimonies that imprisonment was most often accompanied by other violations of rights, such as torture and other forms of cruel and inhuman treatment, rape and other forms of sexual violence, forced labour etc.

Gender dimension of this harm lies in the fact that the conditions of imprisonment for women and girls meant additional forms of repression such as lack of hygiene (women and girls have special sanitary needs, and in case of pregnant women, there was also the need for special healthcare they were deprived of in the context of imprisonment) that could have caused long-term consequences for their reproductive health, as well as consequences in relation to various family and cultural duties of women.

Moreover, women carried the additional burden of breadwinning and child caring. In cases of husbands being imprisoned, women sometimes had to secure their sustenance as well, which often lead to verbal or physical abuse, including sexual violence. Women were also held captive in houses and villages and exposed to additional assaults and intrusions of different groups, often resulting in sexual abuse and rape.

Special attention should be devoted to the issue of imprisonment of women in houses for the purposes of rape and sexual exploitation, domestic work, even slavery and human trafficking.

When it comes to men, sexual violence during imprisonment had an additional dimension of public humiliation and torture.

Men have been potentially in greater jeopardy to be taken to the front line digging trenches, serving as human shield, or being placed in special groups captivated with the purpose of prisoner exchange.

### Proposed beneficiaries

1. Persons who suffered physical and psychological harms individually and/or as a part of a group;
2. Persons who suffered harms to physical and psycho-physical, social, gender, sexual, reproductive and similar integrities, dignity, autonomy and self-determination, individually and/or as a part of a group;
3. Persons who suffered (economically measurable) material losses and income loss (including potential earnings) individually and/or as a part of a group;
4. Persons who became victims of lost opportunities (including missed opportunities for education, employment, social protection and alike), individually or as a part of a group;
5. Persons who suffered, individually or as a part of a group, economic damage due to expenses of legal representation, medical treatment, psychological counselling and alike, as a result of a suffered harm, or any other damage in access to, and exercise of rights.

### PROPOSAL OF (SPECIFIC) REPARATIONS MEASURES - addition to general measures

- Compensations;
- Ensured access to rehabilitative measures – *for the full list of rehabilitative measures please see the General measures*;
- Financial and other support and/or organisation of self-support programs;
- The ownership over the processes of marking the places of Imprisonment must be given to former camp detainees\*

\* Having in mind current legislation on memorials, this measure must be reflected in legislative amendments on all relevant levels.

## P3 SLAVERY AND FORCED LABOUR

### *Proposal of basic elements of the definition:*

Slavery means any unlawful deprivation of liberty with the intent to reduce the person to slavery, which implies absolute disposal of person's life, personal and reproductive integrity, disposal of economic and non-economic gains resulting from captive's labour, exploitation of the person, disposal of person's time, and exercising any or all of the powers attaching to the right of ownership.

### *Additional comments and explanations:*

- P3.1 This harm **includes but is not limited to** imprisonment for special purposes, such as serving the military units (cooking, cleaning and other domestic work); imprisonment for the purpose of inflicting sexual violence and forced prostitution; imprisonment for the purpose of special work duties such as being used as human shield; arrest for the purpose of exchange; trafficking in human beings, particularly women and children, and similar.

- P3.2 Prohibition of “slavery” has been recognized by the Additional Protocol to the II GC as the fundamental right of civilians and persons *hors de combat*. Slavery is also defined as a crime against humanity in the Statute of the International Criminal Tribunal for the Former Yugoslavia (Article 5 c) and in the BiH Criminal Code (Article 172 c) that stipulates that enslavement means “the exercise of any or all of the powers relating to the right of ownership over a person, including the exercise of such power in the course of trafficking in human beings, in particular women and children”.
- P3.3 **Gender dimension:** Currently most visible gender dimension of slavery in BiH can be found in the Kunarac case and it mostly entails sexual slavery – depriving women of any control over their lives and treating them as personal property – one you can trade, among other things. Unfortunately, we still do not have sufficient knowledge about the proportions of this crime. Slavery, much like forced labour, implies complete loss of societal status, or so-called “societal death”<sup>37</sup>, that has different consequences in relation to gender. During the war, and particularly immediately after the war, women and girls had been exposed to the crime of trafficking in human beings, most often for sexual exploitation and violence. Also, it is generally known that after the war BiH became both a transit and a destination area for women trafficked from Eastern Europe, but what is less known is that women and girls were trafficked during the war and forced into prostitution, often in combination with other types of “duties” such as cooking and cleaning for those in uniforms.

#### **Proposed beneficiaries**

1. Persons who suffered physical and psychological harms individually and/or as a part of a group;
2. Persons who suffered harms to physical and psycho-physical, social, gender, sexual, reproductive and similar integrities, dignity, autonomy and self-determination, individually and/or as a part of a group;
3. Persons who suffered (economically measurable) material losses and income loss (including potential earnings) individually and/or as a part of a group;
4. Persons who became victims of lost opportunities (including missed opportunities for education, employment, social protection and alike), individually or as a part of a group;
5. Persons who suffered, individually or as a part of a group, economic damage due to expenses of legal representation, medical treatment, psychological counselling and alike, as a result of a suffered harm, or any other damage in access to, and exercise of rights.

#### **PROPOSAL OF (SPECIFIC) REPARATIONS MEASURES - addition to general measures**

- Compensations;
- Ensured access to rehabilitative measures – *for the full list of rehabilitative measures please see the General measures;*
- Complete prohibition of slavery.

37 Patterson, Orlando. 1982 *Slavery and Social Death – a Comparative Study*, Cambridge MA: Harvard University Press.

## P4 ENFORCED DISAPPEARANCE

### *Proposal of basic elements of the definition:*

Enforced disappearances include any action of arrest, detention, abduction or any other form of deprivation of liberty of persons against their will, after which all traces of the persons get lost, followed by a refusal to give information on the fate or whereabouts of those persons. The harm also includes persons who disappear while escaping war or in other similar situations, and whose families have no information or findings about their fate or whereabouts. Enforced disappearances also include a situation where one's fate remains unknown following killings and mass executions.

### *Additional comments and explanations:*

- P4.1 International Convention for the Protection of all Persons from Enforced Disappearance identifies both missing persons and families of the missing persons as victims of forced disappearance; although the definition of this harm primarily refers to direct victims (i.e. persons who disappeared), the focus of reparations measures are victims' families.
- P4.2 This harm **includes but is not limited to** the disappearance of persons fleeing from war actions; disappearance as a consequence of imprisonment; disappearance as a consequence of concealment of the primary crime of murder, torture, mass executions, shootings, and similar; disappearance in transport of humanitarian aid or during other official assignments within work duty or employment by national or international organisation, or during negotiations with military/paramilitary and other armed groups.
- P4.3 Families of missing persons face additional difficulties directly caused by the disappearance of family members(s), reflected, *inter alia*, in difficult access to social and economic rights<sup>38</sup>, such as the right to property and inheritance, to declare a missing person dead or to access rights without declaring the missing person dead. In addition, during the process of searching for the missing, families of missing persons experience various forms of psychological trauma upon identification of the remains, opening of mass graves, and due to the fact that many bodies have been found in several mass graves, or are generally traumatized because they cannot bury their loved ones. Furthermore, the time and energy invested in the search of the missing family member leads to loss of opportunities to actively participate in society, loss of opportunities to exercise social and economic rights, and similar.
- P4.4 In addition, the fact that many families still do not have any information on the fate of the missing person violates the right to truth which refers to truth telling and access to truth.<sup>39</sup>
- P4.5 Although international humanitarian law does not recognize "enforced disappearance" as a crime, enforced disappearance violates a number of rules of customary international humanitarian law

<sup>38</sup> See *Report of the Working Group on Enforced or Involuntary Disappearances, Addendum, Study on enforced or involuntary disappearances and economic, social and cultural rights*. A/HRC/30/38/Add.5

<sup>39</sup> Article 32 of the Additional Protocol I to the Geneva Convention dated August 12, 1949 relating to the protection of victims in international armed conflicts, recognized the right of families to know the fate of their relatives; Article 32 of the Additional Protocol obliges each party to the conflict, as soon as circumstances permit, to search for the persons who have been reported missing; Office of the High Commissioner for Human Rights (OHCHR) in resolution 2005/66 recognizes the link between the right to truth with the right to access to justice, right to reparations, and efficient remedy and other relevant human rights; the right to truth is stipulated also by the International Convention for the Protection of all Persons from Enforced Disappearance, Article 24 (2), as well as in 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 (UN General Assembly resolution 60/147).

such as the prohibition of arbitrary deprivation of liberties (Rule 99 of the Geneva Convention, hereinafter GC), prohibition of torture and other forms of cruel and inhuman treatment (Rule 90 GC), prohibition of murder (Rule 89 GC). In conflicts of a non-international character, parties to the conflict must take all measures to prevent disappearances, including also by registering persons deprived of liberty (Rule 123 GC). This prohibition must also be viewed in the context of rules on the respect of family life (Rule 105 GC), as well as rules that require all parties to the conflict to take all possible measures to find persons reported as missing, when their disappearance was caused by armed conflict, and ensure that families of missing persons obtain all information on their fate (Rule 117 GC). The cumulative effect of these rules is that “enforced disappearance” is prohibited by international humanitarian law.<sup>40</sup>

P4.6 Forced disappearance is also considered a crime in continuity, and it ends only once a state admits it has detained the person or provides information relating to the destiny of the person or the location of the person.<sup>41</sup>

P4.7 The definition of this harm must be placed in the context of the BiH war and facts we know about how people went missing. UN Declaration on the Protection of all Persons from Enforced Disappearance defines enforced disappearance in the following manner: *“persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organised groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law”*, building on the experience of authoritarian and dictatorship regimes of Latin America and putting in the focus the forced disappearance caused by refusal to acknowledge deprivation of liberty and disclosure of truth. In the context of Bosnia and Herzegovina, in addition to these cases, we also have disappearances which are not necessarily “enforced” in light of the above definition, but disappearances in refuge from war actions (where the element of refusing to disclose the truth is not necessarily present). Therefore, in the context of Bosnia and Herzegovina, the definition of enforced disappearance is wider than the one provided by international law and “enforced” is interpreted in this document to mean that coercive circumstances include also those that have, for instance, been caused by random bombing which forced people to flee, after which they died or disappeared (without any direct perpetrator having knowledge on the fate of the person).

P4.8 **Gender dimension:** International Convention on the Protection of all Persons from Enforced Disappearance identifies both the missing person and the family of the missing person as victims of enforced disappearance. This is especially important for women who constitute a minority of the missing but a majority of the families of missing persons and they suffer disproportional social, economic, and psychological difficulties as a result of the loss of the male family member, who was in many cases the breadwinner. When women are the direct victims of disappearance, it is highly likely that they suffered the same type of harms as male victims prior to their disappearance, e.g. torture, inhuman and degrading treatment, but also rape and other forms of sexual and gender-based violence that might be specific for women victims, or those that take different forms when inflicted upon men. The gender dimension of this harm requires an understanding of why women or men become victims of enforced disappearance, the range of crimes committed against them before their disappearance, as well as the understanding of the gender-specific challenges of the surviving family members (mostly women) in terms of acquiring rights on grounds of disappearance and the right to know the fate of the missing family member. For additional comments, please see P6.4.

40 [https://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule98](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule98)

41 OHCHR, Working Group on Enforced or Voluntary Disappearances, General Comment on Enforced Disappearance as a Continuous Crime, 3.

### Proposed beneficiaries

1. Individuals or groups that suffered non-material damage;
2. Persons who suffered (economically measurable) material losses and income loss (including potential earnings) individually and/or as a part of a group;
3. Persons who suffered, individually or as a part of a group, economic damage due to expenses of legal representation, medical treatment, psychological counselling and alike, as a result of a suffered harm, or any other damage in access to, and exercise of rights.

### PROPOSAL OF (SPECIFIC) REPARATIONS MEASURES - addition to general measures

- Compensations;
- Financing of basic costs of finding, identifying and burying the person;
- Ensured access to rehabilitative measures – *for the full list of rehabilitative measures please see the General measures*;
- Full disclosure of the fates of missing persons;
- Ensuring transparency of the exhumation and identification process (ensure full insight into the process to family members).

## P5 RAPE AND OTHER FORMS OF SEXUAL VIOLENCE

### *Proposal of basic elements of the definition:*

This harm includes any form of sexual coercion, i.e. any violence of a sexual nature\*. It includes physical and psychological acts of sexual nature committed against a person in coercive circumstances, as well as forcing a person to perform such acts on a third person. Any coercive act of sexual nature, attempt to commit acts of sexual nature under coercion, sexual harassment, human trafficking, abuse of position of power to coerce a person to sexual acts, or any other abusive act against one's sexuality, irrespective of family or other type of relation with the victim, shall also constitute this harm.

\* Regardless if the perpetrator is a member of enemy or "friendly" army.

### *Additional comments and explanations:*

- 5.1 This harm **includes but is not limited to** rape (including rape by objects), sexual slavery, and forced prostitution (detainment in camps, house arrests, and imprisonment in public and private buildings used for rape and other forms of sexual violence); forced labour, including gender-specific forms such as domestic work; forced pregnancies and enslavement until the time she can no longer perform an abortion; pregnancy as unintentional rape outcome; forced abortion, or forced late term abortion; sexually transmitted diseases; forcing to watch an act of rape or other types of sexual violence; trafficking in women; rape in marital or extra-marital relations;

rape as retaliation in the context of return; forced partnership <sup>42</sup>; forced incest, i.e. forcing persons to have sexual relations with their family members under the threat of death (usually with other people watching); forced prostitution (including sexual slavery and trafficking in human beings); inappropriate medical examinations; forced nudity and naked body searches; verbal insults with sexual connotations, and similar.

- 5.2 This harm entails serious consequences for the victim – inability to establish an intimate or emotional relationship as a result of being subjected to various forms of sexual violence; various forms of social ostracism, marginalization, and stigmatization; delivery of a child born out of rape and raising that child; loss of reproductive abilities due to sexual crime (physical injury during rape can cause sterility, particularly among younger victims); reduced life quality due to permanent personality changes; psycho-somatic illness (severe traumatic experiences can result in permanent personality changes and psycho-somatic illnesses); reduced ability to work, and similar.
- 5.3 Rape and other forms of sexual violence in war are prohibited by customary international law, but it lacks a specific crime of “sexual violence”. Instead, if the given conditions are met, the international law treats rape and other forms of sexual violence as **war crime**, i.e. serious violation of the Geneva Conventions, that includes wilful deprivation of life, torture or inhuman treatment or wilful infliction of great suffering or serious bodily or health injuries; as **crime against humanity** when committed as part of a wider or systemic attack on civilian population, and the perpetrator had been aware of that fact (Statute of the International Criminal Tribunal for the Former Yugoslavia, Art. 5 g, Statute of the International Criminal Court, Art. 7 paragraph 1 g), including murder, extermination, enslavement, deportation, imprisonment, torture, rape, and similar; and as **genocide** when rape was committed with the intent to destroy, entirely or in part, a group (ethnic, religious etc.) subject to the attack, including killing, causing serious bodily or mental harm to members of a group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, etc.<sup>43</sup>
- 5.4 **Gender dimension:** Rape and other forms of sexual violence must be viewed in light of the patriarchal BiH society at the time the crimes were committed, as well as in the current context of the exercise of rights of survivors.

With regard to men victims of rape and other forms of sexual violence, the circumstances of the committed crimes must be taken into consideration. The judgments of the ICTY and the Court of BiH provide examples of sexual violence against men used as public humiliation acts, forcing other captives to sexual acts against other captives (most frequently other men), genital mutilation, and other forms of physical and psychological torture combined with sexual violence. These cases demonstrate that the aim of these acts was a complete humiliation of a person and an attack to the person’s masculinity. In the context of the BiH hetero-normative and patriarchal society, the aim was to completely destroy sexuality, integrity, dignity, autonomy and self-determination of a person.

Rape and other forms of sexual violence against women have also been committed as acts

42 Refers to the “choice” between two equally unacceptable options - being at the mercy of one or several persons or “opting for” one person for protection, which implies having sexual relations with that person, or accepting “partnership” under death threats directed at her children or other relatives.

43 Kirsten Campbell, *The Gender of Transitional Justice: Law Sexual Violence and the ICTY. International Journal of Transitional Justice*, Vol. 1, 2007. pg 413 -415; Između stigme i zaborava, Vodič za odbranu prava žena-žrtava silovanja ili drugih oblika seksualnog nasilja u Bosni i Hercegovini (Between Stigma and Oblivion, A Guide on Defending the Rights of Women Victims of Rape or other Forms of Sexual Violence in Bosnia and Herzegovina), TRIAL, 2012, p. 14-15.



of public humiliation and in combination with physical and psychological torture, but within contexts of “private” spaces without witnesses. When considering acts of rape of women and girls, both in terms of understanding of what had happened and defining adequate reparations measures, the continuity of violence against women must be taken into account. Violence against women is not an exclusive deviant thing that individuals committed during the war – it has its roots in individual, structural, and inter-personal peacetime violence which takes on its extreme forms in times of war. UN Special Rapporteur on violence against women, its causes and consequences calls this phenomenon “violence in continuity”.<sup>44</sup>

It must be taken into account that health consequences caused by this harm are different for women and men.

### **Proposed beneficiaries**

1. Persons who suffered physical and psychological harms individually and/or as a part of a group;
2. Persons who suffered harms to physical and psycho-physical, social, gender, sexual, reproductive and similar integrities, dignity, autonomy and self-determination, individually and/or as a part of a group\*;
3. Persons who became victims of lost opportunities (including missed opportunities for education, employment, social protection and alike), individually or as a part of a group;
4. Persons who suffered, individually or as a part of a group, economic damage due to expenses of legal representation, medical treatment, psychological counselling and alike, as a result of a suffered harm, or any other damage in access to, and exercise of rights.

\* It is necessary to specifically reflect on the issue of children born out of rape, and on ways to address this group. Generally, children born out of rape can be divided to three groups - 1) those who know the circumstances of their birth, where direct individual reparations must be provided, such as financial compensations, university scholarships, rehabilitative measures and alike 2) those who do not know the circumstances, but who may find out at one point in life, which is why the state must provide necessary conditions such as psychological counselling centres and financial compensations, 3) children who will never find out – it is impossible to provide direct reparations for this group, but in the context of collective symbolic reparations, it is important to always include this group.

### **PROPOSAL OF (SPECIFIC) REPARATIONS MEASURES - addition to general measures**

- Compensations;
- Ensured access to rehabilitative measures – *for the full list of rehabilitative measures please see the General measures*;
- Appointment of special prosecutors responsible for cases of sexual violence;
- Local communities should provide financial and other type of support to associations of victims or victims’ groups involved in self-support activities (socialising, psychological assistance, organising bazaars, etc.);
- Absolute prohibition of all forms of sexual violence.

44 See the Report of the Special Rapporteur on violence against women, its causes and consequences, A/HRC/17/26.

## P6 DEATH

### *Proposal of basic elements of the definition:*

This harm includes all actions that resulted in forced deprivation of life, as well as death of a person caused by consequences of war.

### *Additional comments and explanations:*

- P6.1 This harm **includes but is not limited to** the death caused by direct war actions (shells, sniper rifles, grenades, execution, wounding, poison gas, etc.); death caused by deprivation of basic life provisions (food, shelter, medicines and adequate medical care, and other similar circumstances); death caused by targeted violence and torture; death caused by land mines and UXOs<sup>45</sup> both during and after the war; death under unexplained circumstances (in hospitals, mental institutions or other circumstances).
- P6.2 Although the definition of this harm primarily refers to victims (persons who died as a result of forcible deprivation of life or consequences suffered due to war), the reparations measures focus on the families of victims.
- P6.3 Killing of civilians and prisoners of war is a war crime and violation of international human rights law, i.e. violations of the prohibition of arbitrary deprivation of the right to life, which applies irrespective of situation or context. This prohibition also encompasses unlawful killing in the conduct of hostilities such as the direct attack against civilians, attacks in general or attacks against military objectives causing excessive loss of civilian life.<sup>46</sup>
- P6.4 **Gender dimension:** Disaggregated data about the number of women and men that died does not exist as public information. However, there are gender dimension of this harm – in addition to death as a consequence of direct war actions, other causes of death of women include inability to care about her reproductive health, and similar.

Also, we can generally speak about the gender dimension of this harm in light of reparations measures beneficiaries. When an adult dies in the family, single parent families emerge that bear various gender dimensions in the patriarchal society of BiH. These families are often in financial difficulties, regardless of the gender of the single parent. However, losing a father often means losing the breadwinner. On the other hand, losing a mother often means losing the person in charge of caring for the family and upbringing children.

In addition, losing a male breadwinner often raises complicated questions about inheritance and the right to property (especially if this right was based on tenancy right). As in many cases such families are victims of multiple harms, such as displacement, oftentimes access to inheritance or property rights becomes a mission impossible for a woman in the patriarchal society that registers almost all property to men. For additional comments, see P4.8.

<sup>45</sup> See: P7.3

<sup>46</sup> [https://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule89](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule89)

### Proposed beneficiaries

1. Individuals or groups that suffered non-material damage;
2. Persons who suffered (economically measurable) material losses and income loss (including potential earnings) individually and/or as a part of a group;
3. Persons who suffered, individually or as a part of a group, economic damage due to expenses of legal representation, medical treatment, psychological counselling and alike, as a result of a suffered harm, or any other damage in access to, and exercise of rights.

### PROPOSAL OF (SPECIFIC) REPARATIONS MEASURES - addition to general measures

- Compensations;
- Financing of basic costs of burial and/or transfer to the chosen gravesite;
- Ensured access to rehabilitative measures – for the full list of rehabilitative measures please see the General measures;
- Commemoration in the execution site by placing commemorative plates or footprints on the pavement (stumbling stones).

## P7 BODILY AND MENTAL INJURIES

### *Proposal of basic elements of the definition:*

Bodily and mental injuries include pain, suffering, and injuries inflicted to the body, the physical, mental, or reproductive health, or the integrity of a person.

### *Additional comments and explanations:*

- P7.1 This harm **includes but is not limited to** bodily injury resulting from direct war actions (shells, sniper rifles, grenades, poison gas, etc.); bodily and/or mental injury resulting from lack of basic life provisions (lack of food, shelter during the winter, lack of medicines and treatment options and other similar circumstances); bodily and/or mental injury resulting from targeted violence and torture; bodily and/or mental injury resulting from wounding; bodily injury resulting from land mines and UXOs during and after the war; impaired reproductive health due to exposure to war activities, targeted violence and torture, and inadequate living conditions.
- P7.2 Consequences of bodily and mental injuries are often long-lasting and they include, *inter alia*, reduced quality of life due to permanent change of personality, disability, permanent health problems, reduced work capacity, impaired emotional capacity, psychosomatic illnesses, impaired reproductive health and the like.
- P7.3 One of the causes of bodily and mental injuries is mines/UXOs. According to 2013 General Assessment of Mine Situation in Bosnia and Herzegovina, there are 1,417 communities affected by mines/UXOs. According to the report, locations contaminated by mines/UXOs directly affect safety of about 540,000 citizens, of which slightly under 10% are considered to be at high risk,

19% at medium risk and 71% at low risk of mines/UXOs. BHMAC's Database on Mines, Cluster Munitions and Explosive Remnants of War suggests that in the period from 1992 to 1996 a total of 6,326 persons were killed by mines in Bosnia and Herzegovina, while in the post-war period up until 2013 there were 1,710 registered mine casualties, of which 597 people were killed. In case of 269 mine casualties the year of injury is unknown. According to these data, somewhat more than 20% of the total number of mine/UXOs casualties occurred in the post-war years.<sup>47</sup> Although mine/UXOs casualties occurred after the war, the harm itself is a direct consequence of the war and failure of the state to provide security throughout the territory of Bosnia and Herzegovina. Therefore, the time frame for reparations measures in the context of this harm must be interpreted differently and it must include all persons who have experienced (will experience) mine/UXOs injuries in the post-war period.

**P7.4 Gender dimension:** Sex and gender of victims affects the experience of bodily and/or mental injury and entails different social consequences. Although it is undisputable that bodily and mental injuries negatively impact the quality of life of both men and women, making them subjects of discrimination on ground of their disability, women suffer multiple consequences. Women and girls with disabilities experience double discrimination – as women and as persons with disabilities. Discrimination can be even more pronounced in rural areas (lack of infrastructure, for instance asphalt road for the wheelchair, more stigmatisation, etc). Women with psychological and physical disabilities also have less opportunity for employment than men, becoming thus victims of economic discrimination, and they frequently have less access to healthcare. Women and children with disabilities are more exposed to violence (sexual, domestic, or other). Furthermore, women are traditionally caretakers of family members with mental and/or bodily disabilities. Some women, in addition to these demanding duties, take over the duty of family's economic survival and carry the burden of the sole breadwinner. In a difficult social and economic environment, they may become a potential human trafficking risk group or targets of other forms of organised crime.

#### **Proposed beneficiaries**

1. Persons who suffered physical and psychological harms individually and/or as a part of a group;
2. Persons who suffered harms to physical and psycho-physical, social, gender, sexual, reproductive and similar integrities, dignity, autonomy and self-determination, individually and/or as a part of a group;
3. Persons who suffered (economically measurable) material losses and income loss (including potential earnings) individually and/or as a part of a group;
4. Persons who became victims of lost opportunities (including missed opportunities for education, employment, social protection and alike), individually or as a part of a group;
5. Persons who suffered, individually or as a part of a group, economic damage due to expenses of legal representation, medical treatment, psychological counselling and alike, as a result of a suffered harm, or any other damage in access to, and exercise of rights.

47 2014 Annual Operating Plan for Mine Action in Bosnia and Herzegovina.

## PROPOSAL OF (SPECIFIC) REPARATIONS MEASURES - addition to general measures

- Compensations;
- Infrastructural accommodation of persons with disabilities (access ramps, adapted public transport, sound traffic lights, adapted pavements, elevators and so on);
- Ensured access to rehabilitative measures – *for the full list of rehabilitative measures please see the General measures.*

## P8 FORCED DISPLACEMENT AND EXILE

### *Proposal of basic elements of the definition:*

This harm includes all persons who, under coercion, fear or due to the lack of living conditions and the general inability of the state to protect their right to life and dignity, were forced to leave BiH or who were displaced within the borders of BiH. The harm encompasses persons with or without the ability to temporarily or permanently return to their pre-war residence, as well as persons forced by displacement to temporarily or permanently live in inhumane and degrading circumstances.

### *Additional comments and explanations:*

- P8.1 This harm **includes but is not limited to** leaving home under duress, death threat or threat to members of family from a specific territory; leaving home because of oppression or discrimination on gender, political, racial, national, ethnic, cultural, religious, sex or other grounds; deportation; persecution of a group of people or a collective on grounds of gender, political, racial, national, ethnic, cultural, religious, sex or other grounds; displacement due to devastating war activities and damages or destruction of housing units and broader environment (the entire infrastructure, schools, hospital, factories, roads, etc.), which makes it impossible or very difficult for people to stay; displacement due to refusal of those who were conscripts to take part in war activities (desertion); displacement as a result of medical evacuation; displacement as a consequence of evaluation of vulnerable groups, and similar.
- P8.2 In Bosnia and Herzegovina there are over 2.2 million people who have been forced to leave their homes. Of the total number of displaced persons 1.2 million people left Bosnia and Herzegovina (refugees), while 1 million has been internally displaced. Displacement was a part of official forced displacement and deportation campaigns but people also abandoned their homes due to imminent threat or fear of death. There were also organised displacements of individuals or groups of people conducted by military or police authorities. This harm should also include *exile* as a direct consequence of forced displacement.
- P8.3 In international law, the prohibition of displacement of civilian population is defined in the Additional Protocol II of the Geneva Convention, Article 17, while the Statute of the International Criminal Court classifies forcible displacement as a war crime, save it was done for security or military reasons. Statutes of the International Criminal Tribunal for the Former Yugoslavia and Rwanda, as well as of the International Criminal Court classify deportation and displacement of civilians as a crime against humanity. *Guiding principles on internal displacement* state that all

authorities and international actors “shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons” (Principle 5).<sup>48</sup>

**P8.4 Gender dimension:** There is no official gender disaggregated data on 2.2 million of women and men refugees from BiH. However, the general view is that the majority of forcibly displaced persons were women and children. From ca. 100,000 internally displaced persons, more than 8,000 still live in collective centres and they constitute the most vulnerable part of this population. According to a non-published report drafted by the Centre for Refugees and IDP Studies, majority of people living in collective centres are single mothers and widows. The living conditions in these collective centres are far from acceptable. Their income usually comes from social benefits or pensions, and their living standard is not close to decent. Research shows that their access to housing, food, healthcare, education, and other social and economic rights is either difficult or impossible.

As refugees or in displacement, women were the only breadwinner and caretakers of the primary family, and sometimes also the expanded family (women who sent help to their families in war zones). Often exposed to inhuman living conditions, without access to healthcare (ill women, pregnant, mothers of ill and/or wounded children or other family members), they had to fight for their survival and the survival of their children and families and face oftentimes complex administrative hurdles or even get involved in unlawful activities (such as illegal border crossing or unlawful employment), without any protection of their human rights and psycho-social integrity. Many were exposed to different and multiple forms of discrimination and violence. Being a refugee or a displaced person affected and still affects lives of women in peacetime: many lost their education opportunities; many lost their pre-war employment, and by that also their social and family status; many lost the right to bridge service years, affecting their right to pension; many suffered various material losses and the right to their pre-war property; and a range of other social rights.

#### **Proposed beneficiaries**

1. Persons who suffered harms to physical and psycho-physical, social, gender, sexual, reproductive and similar integrities, dignity, autonomy and self-determination, individually and/or as a part of a group;
2. Persons who suffered (economically measurable) material losses and income loss (including potential earnings) individually and/or as a part of a group;
3. Persons who became victims of lost opportunities (including missed opportunities for education, employment, social protection and alike), individually or as a part of a group;
4. Persons who suffered, individually or as a part of a group, economic damage due to expenses of legal representation, medical treatment, psychological counselling and alike, as a result of a suffered harm, or any other damage in access to, and exercise of rights.

#### **PROPOSAL OF (SPECIFIC) REPARATIONS MEASURES - addition to general measures**

- All measures have been included in general measures, but special attention should be paid to compensations and reparations for persons still living in collective centres.

<sup>48</sup> <http://cesi.fpn.unsa.ba/wp-content/uploads/2012/12/Vodeći-principi-internog-raseljenja.pdf>

**P9****SEIZURE, DESTRUCTION AND/OR DAMAGING OF MOVABLE AND IMMOVABLE PROPERTY***Proposal of basic elements of the definition:*

This harm includes unlawful, arbitrary and forcible seizure, appropriation, confiscation, usurpation, plunder, destruction and/or damaging of private movable and immovable property.

*Additional comments and explanations:*

- P9.1 This harm **includes but is not limited to** damage or complete destruction of property; unlawful and arbitrary seizure and plundering of movable and immovable property by private individuals, authorities, military and police forces; seizure of property for the military purposes without paying adequate compensation; usurpation of private property as a result of the war or consequences thereof and similar;
- P9.2 The right to property is regulated by the Universal Declaration of Human Rights, in Article 17/2) - No one shall be arbitrarily deprived of his property – as well as by the Statutes of the International Criminal Court and the International Criminal Tribunal for the Former Yugoslavia, the Constitution of Bosnia and Herzegovina, i.e. the Dayton Peace Agreement.
- P9.3 During the war in Bosnia and Herzegovina over 500,000 dwellings i.e. half of the national housing stock has been destroyed by war. The Human Rights Chamber of Bosnia and Herzegovina received and decided on a number of complaints filed by citizens about forced evictions from their homes and seizure of their property not only by individuals but also by authorities, i.e. representatives of military and police forces.
- P9.4 In the context of the time period to be covered by the reparations program, special attention should be paid to the fact that property of some people was destroyed or damaged beyond the official time period of the war, while the harm as such has been related to the state of war or committed by foreign military units such as UNPROFOR. Working group tasked with developing the official reparations program should take into account this fact when they embark upon developing the procedural aspects of the program.
- P9.5 Also, the problem of persons that unlawfully (respectful of the administrative solutions at that time) used other people's property must be solved. They are currently entitled to compensations for the alleged investments in the property, from the person whose property they have been unlawfully using. The compensations are granted in courts.
- P9.6 **Gender dimension:** In exercising the right to reparations on grounds of violation of the right to property, i.e. seizure and/or damaging of movable and immovable property, the account should be taken of the fact that in the pre-war period owners of the property were mainly male family members, and that in the post-war period women whose male family members were killed and went missing or those who divorced have difficulties in accessing their property.

### Proposed beneficiaries

1. Persons who suffered (economically measurable) material losses and income loss (including potential earnings) individually and/or as a part of a group;
2. Persons who suffered, individually or as a part of a group, economic damage due to expenses of legal representation, medical treatment, psychological counselling and alike, as a result of a suffered harm, or any other damage in access to, and exercise of rights.

### PROPOSAL OF (SPECIFIC) REPARATIONS MEASURES - addition to general measures

- Conduct a revision/investigation of the allocation of donor funds.

## P10 SIEGE

### *Proposal of basic elements of the definition:*

This harm includes all locations (city, village, local community, etc.) subject to military blockade, which deprived the civilian population of ability to exercise their fundamental human and other rights.

### *Additional comments and explanations:*

- P10.1 Life under siege, due to restricted movement not only beyond the borders of the besieged territory but very often within it, has caused a series of additional harms, which **include but are not limited to** lack of access to basic human rights, exposure to direct assaults and attacks intended to terrorise and harm the population, lack of basic provisions such as food, water, electricity, medicines, etc., dependence on criminal groups in terms of procuring food and other necessities, exposure to death and wounding, lack of hygienic provisions, violation of social and economic rights, etc.;
- P10.2 According to the Statute of the International Criminal Court extermination also includes “the intentional infliction of conditions of life inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population”, and represents crime against humanity if the acts, when committed, were part of a widespread or systematic attack directed against any civilian population (Article 7).
- P10.3 **Gender dimension:** In the cities that were under siege, women carried the double burden of being breadwinners of their families, while at the same time many of them were forcibly mobilised to work duty. In the post war period, the programs and processes of demobilisation of men discriminated against women, because men who were on active duty were granted accelerated retirement plan, while women who were working during the war were left without this or any other recognised right. Furthermore, women had additional responsibility of breadwinning and taking care of their children, and generally poor living conditions jeopardised their health, including reproductive health. Siege conditions are favourable for impunity and persons, most often men, having control over weapons and food abuse this fact in various ways, inter alia, for sexual abuse of women.



### Proposed beneficiaries

1. Persons who suffered physical and psychological harms individually and/or as a part of a group;
2. Persons who suffered (economically measurable) material losses and income loss (including potential earnings) individually and/or as a part of a group;
3. Individuals or groups that suffered non-material damage;
4. Persons who suffered harms to physical and psycho-physical, social, gender, sexual, reproductive and similar integrities, dignity, autonomy and self-determination, individually and/or as a part of a group;
5. Persons who became victims of lost opportunities (including missed opportunities for education, employment, social protection and alike), individually or as a part of a group;
6. Persons who suffered, individually or as a part of a group, economic damage due to expenses of legal representation, medical treatment, psychological counselling and alike, as a result of a suffered harm, or any other damage in access to, and exercise of rights.

### PROPOSAL OF (SPECIFIC) REPARATIONS MEASURES - addition to general measures

- Ensure functional infrastructure in formerly besieged communities as a part of trauma healing.

## P11 FORCED IDENTITY CHANGE

*See comments in the section above.*

## P12 VIOLATION OF SOCIAL, ECONOMIC AND CULTURAL RIGHTS

*Proposal of basic elements of the definition:*

This harm includes all forms of human rights violations with regard to employment, social security, family life, participation in cultural life, access to clean water, adequate nutrition, adequate housing, healthcare and education. This harm includes deprivation of running water, food, electricity, heating, communications and similar. It also includes all forms of violations of these rights not only in the context of war but also the post-war period, whenever the violation can be connected with the war.

*Additional comments and explanations:*

- P12.1 This harm **includes but is not limited to** the breach of the right to fair and favourable work conditions through unlawful and random layoff, demotion, lack of adequate and regular compensation for work, failure to bridge service period; discrimination against individuals and

groups in accessing health and employment; violation of the right to adequate standard of living (lack of food, clothing, water, electricity, sanitation/hygiene, etc.); lack of or difficult access to education; lack of or difficult access to health services (e.g. inability to vaccinate children during the war, lack of or difficult access to treatment for physical and mental illnesses, etc.); lack of or difficult access to cultural rights.

- P12.2 Social and economic rights of all citizens had been violated throughout Bosnia and Herzegovina, sometimes in similar manners and at times very specifically. The state of war and war conditions have limited or completely deprived some people of healthcare, adequate nutrition and housing infrastructure, ability to work or be adequately compensated for the work done, etc.
- P12.3 Violation of these rights occurred as a result of the state failing to provide for, in a state of war, adequate mechanisms to secure these rights, and direct violation of these rights by the state itself (e.g. failure to regulate and adequately compensate those who worked during the war – work duty).
- P12.4 International Covenant on Economic, Social and Cultural Rights is very clear - the economic, social and cultural rights belong to everyone without discrimination and these rights are valid even during the war. The concept of *progressive implementation*, as is underlined in the General Comment 3 of the Committee for Economic, Social and Cultural Rights, stipulates “minimum core obligations”, i.e. minimum essential levels of each of the rights is incumbent upon every state without discrimination and regardless of the availability of its resources or any other factor or difficulty.<sup>49</sup>
- P12.5 Social, economic and cultural rights include: the right to best possible physical and mental health, the right to work (including employment, technical and professional training and orientation), access to health services, the right to education, the right to social security (including social insurance), adequate living standard (including adequate food, clothing and housing). International law requires that the states create an environment that will enable the exercise of these rights, *inter alia*, by adopting adequate and effective legal and administrative procedures. Some of these rights are enshrined in the Dayton Peace Agreement, both in Annex IV (BiH Constitution) and in Annex VI.
- P12.6 The inability of the state to establish functional mechanisms for the exercise of social and economic rights in the post-war period, while the entity and cantonal laws, among other things, placed social and economic rights in the context of the injuries suffered by the victims had further marginalised already vulnerable groups. Difficult social and economic status has hit, *inter alia*, single parents/single caregivers (lack of assistance mechanisms, e.g. free day care centres, home care, family counselling services and/or mental health centres), abandoned children, orphans of war, adopted/foster children, children born out of rape and others..
- P12.7 Many examples of abuse and harassment by the administration and service providers against claimants of the rights due to the fact that they are victims or relatives of victims suggest that victims’ rights have been continuously violated and that victims have been prevented from exercising some of the basic social and economic rights, even when such rights are defined in the laws of entities and cantons.
- P12.8 **Gender dimension:** Solving certain life problems caused by war in Bosnia and Herzegovina,

49 Article 10, General recommendation 3.

which are directly related to access to economic and social rights is difficult for many, in particular women, who face many problems and obstacles.

We have already mentioned the gender dimension in accessing property or in its return for persons having the CVW status (see P6.4) and this relates directly to the right to adequate housing. Those women who manage to obtain the status of a civilian victim of war are entitled to a minimum monthly allowance. Even though the law provides for the right to housing and other rights in view of economic and social rights, these rights are seldom implemented. Besides financial compensations and sporadic health insurance, other economic and social rights stipulated by laws are not being implemented (right to education, right to work, right to housing).

According to data collected by UNDP <sup>50</sup> before the war women accounted for 36% of labour force and they mainly worked in jobs considered “typically female” (women accounted for 73.9% of total health workers, 73.7% of total staff in banking sector, 54.1% of staff in administration and 85.3% of employees in the sector of education and culture). During the war, significant part of infrastructure where women made up majority was damaged or destroyed. In the after war period, women’s unemployment skyrocketed, and the wave of privatisation, which occurred in the post-war period, significantly contributed to it. Today, because of lack of jobs, many women work on a black market, without any form of protection, be it health or pension insurance.

For a more comprehensive overview of the gender dimension of economic, social and cultural rights in times of conflict and in post-conflict societies, see the General Recommendations of the Committee on the Elimination of Discrimination against Women.

#### **Proposed beneficiaries**

1. Persons who became victims of lost opportunities (including missed opportunities for education, employment, social protection and alike), individually or as a part of a group);
2. Persons who suffered physical and psychological harms individually and/or as a part of a group.

#### **PROPOSAL OF (SPECIFIC) REPARATIONS MEASURES - addition to general measures**

All measures have been included by general measures.

## **P13 FORCED MILITARISATION OF SOCIETY**

#### *Proposal of basic elements of the definition:*

This harm includes all acts that resulted in the destruction of the entire BiH social fabric, including ethnicization of society, destruction and plundering of social, economic, and ecological systems and resources, as well as of political organisations, distortion of secular social principles, introduction of misogyny, chauvinism, homophobia, nationalism, racism, militarism and fascism into everyday life, removal of mechanisms for peaceful resolution of social conflicts, and arming and mobilising individuals and groups with the aim of bringing the society to a state of war.

<sup>50</sup> 1998 UNDP Human Development Report

*Additional comments and explanations:*

- P13.1 This harm **includes, but is not limited to:** destruction of social, political and economic organisations, systems and resources, e.g. destruction of infrastructure (roads, hospitals, museums, libraries, schools, and so on), educational and health systems, destruction of the ecosystem (pollution of water, land, air, destruction of forests, flora and fauna, etc.), pension fund and like; transformation of public into private goods without democratic insight into such processes; plundering of social property and warmongering; forced ethnification of society (including ethno-religious, ethno-corporate, and similar); incitement to hatred, discrimination, hostility or violence based on political, national, racial, religious, gender, sexual and other grounds by civil servants, political representatives, civil and military authorities, media and others; the use of weapons and military force against civilian population; (forced) mobilisation of able-bodied persons, persons with disabilities and minors; imposing forcibly social order.
- P13.2 This harm also includes imposition of gender, ethnic, sexual, religious and other types of identities, including labelling of individuals and groups; physical and psychological punishment of persons “because of their identity” (who are arbitrarily qualified as villains). Identity imposition had been occurring not only in the context of imposing identities to groups different from “ours”, which were then translated into “military targets” but also within “one’s own group” in order to construct, build and/or reinforce the existing identities of certain groups, primarily those who will later on become constituent peoples: Bosniaks, Croats and Serbs. Identities imposed within the group led to extremely rapid changes in social norms with respect to religion, gender roles, political affiliation, etc. Imposing identities on “other” groups and individuals had been arbitrary and aimed at constructing an enemy, which was often done in serious breach of international humanitarian law and international human rights law.
- P13.3 Forced militarisation of a society is essentially a violation of the right to peace, which is the fundamental precondition for the exercise of all human rights, particularly the right to life. States, severally or jointly, are the principal duty-holders of *the right to peace*. By conducting forcible militarisation of the society, the state violates the obligation to eliminate war threats, refrain from the use of force and find mechanisms for peaceful conflict resolution.
- P13.4 In 2012 the Human Rights Council Advisory Committee submitted to the Council a report on the right of peoples to peace, together with a draft Declaration on the Right of Peoples to Peace. According to findings of the report and draft declaration, everyone has the right to human security, which includes freedom from fear and from want, all constituting elements of positive peace, and also includes freedom of thought, conscience, opinion, expression, belief and religion, in conformity with international human rights law. Freedom from want implies the exercise of the right to sustainable development and of economic, social and cultural rights. The right to peace is related to all human rights, including civil, political, economic, social and cultural rights. The right to peace, i.e. the right to live in peace is also important from the aspect of enabling individuals to develop fully all their capacities, physical, intellectual, moral and spiritual, without being the target of any kind of violence. Also, everyone has the right to be protected from genocide, war crimes, the use of force in violation of international law, and crimes against humanity. The draft Declaration also foresees an obligation of the states to develop and strengthen the mechanisms to eliminate inequality, exclusion and poverty, as they generate structural violence, which is incompatible with peace. The Declaration also anticipates active role of women and civil society organisations in peace building.

- P13.5 As a direct consequence of the war, the majority of BiH citizens and the society as a whole has been impoverished, disempowered, and brought into a situation of complete political, economic and social insecurity.
- P13.6 Inclusion of the Constitution of Bosnia and Herzegovina into Dayton Peace Agreement without prior consultations with the citizens was an undemocratic act and disenfranchisement. By adopting the Constitution at the level of political elites, which at the time led the military structures as well and contributed to social division, Bosnia and Herzegovina as a state was pushed into further divide, while the citizen were deprived of the possibility to take active participation in the democratic process.
- P13.7 **Gender dimension:** The war had a different impact on the lives of women and men; the needs of women remain unrecorded after the war and are excluded from public policies and post-conflict reconstruction policies of the BiH society. Although war is the key part “forced militarisation”, or its final manifestation, the effects of social militarisation are much more far-reaching and comprehensive. Militarisation involves a spectre of institutions, practices, values, and cultural aspects that disproportionately impact the social position of women. A militarised society stresses even more the powers of a patriarchal regime as well as the roles it assigns. This is also visible in the fact that men had exclusive control over and access to armies, which also provided them with the decision-making power about the political and economic set-up of the state, as well as exclusive power over resources in the post-war BiH. Furthermore, women, the majority of civilian population, have been affected by all aspects of war – from civilian victims to the forcibly displaced. By the adoption of Resolution 1325 “Women, Peace and Security”, UN Security Council confirmed the need to include women and girls, as particularly affected groups, in the process of resolving and preventing conflicts.

#### **Proposed beneficiaries**

1. Persons who suffered physical and psychological harms individually and/or as a part of a group;
2. Persons who suffered (economically measurable) material losses and income loss (including potential earnings) individually and/or as a part of a group;
3. Individuals or groups that suffered non-material damage;
4. Persons who suffered harms to physical and psycho-physical, social, gender, sexual, reproductive and similar integrities, dignity, autonomy and self-determination, individually and/or as a part of a group;
5. Persons who became victims of lost opportunities (including missed opportunities for education, employment, social protection and alike), individually or as a part of a group;
6. Persons who suffered, individually or as a part of a group, economic damage due to expenses of legal representation, medical treatment, psychological counselling and alike, as a result of a suffered harm, or any other damage in access to, and exercise of rights.

### **PROPOSAL OF (SPECIFIC) REPARATIONS MEASURES - addition to general measures**

- A revision of the Dayton Peace Agreement;
- Prosecution of persons who assisted or were part of the militarisation system (e.g. by warmongering rhetoric);
- Prosecution of war profiteering and confiscation of proceeds of war profiteering and investing these funds in local community infrastructure development\*
- Investigation about transformation of public goods into private property, followed by a revision;
- Introducing an obligation into the foreign policy of Bosnia and Herzegovina according to which BiH shall always promote peaceful solutions and encourage the use of war prevention mechanisms in the UN and other forums and places of decision-making;
- Prohibition of the use of warmongering, conflict-oriented and discriminatory rhetoric in domestic and foreign policies, and strict punishment mechanisms for violation of this prohibition;
- Adequate representation of women in BiH delegations in all formal and informal peace negotiating bodies.

\* Sva sredstva prikupljena konfiskacijom i prodajom takve imovine trebala bi se uplatiti u fond za reparacije.

Velma Pijalović

To estimate the funding required for the implementation of the reparations program presented in the “The Concept and Framework for the Development of a Gender-Sensitive Reparations Program for Civilian Victims of War in Bosnia and Herzegovina” it is necessary to make a projection of the number of beneficiaries under each harm and funds needed for each measure. Such an estimate must be based on a comprehensive analysis that goes beyond the framework of this document, but it is important to mention some of the most relevant aspects of the financial implications of the reparations program:

- i. Time frame (when the harm happened, reparations payment period, etc.);
- ii. Scope (does the program cover only civilian victims of war or other victims as well);
- iii. Manner to assess “damage” (opportunity costs mentioned with the definitions of harms make the program more expensive);
- iv. Establishing reparations measures (“targeted” or “general”, benefits based on contributions or not; every measure proposed has its short-term and long-term implications); and
- v. Who makes the payments and from which funds?

Reparations program can be financed in a number of ways: using the existing funds or by a loan, with a one-off payment or in a number of instalments, by the establishment of a special fund or from various sources of financing depending on the measure, etc. In determining the manner to secure funding for reparations, account should be taken of the state of public finances in Bosnia and Herzegovina that must undergo a comprehensive financial consolidation. It is also noteworthy that the principle of “acquired rights may not be threatened” and the concurrent expansion of the beneficiary base place additional burden on BiH’s public spending and may result in a financial collapse. Namely, public budgets are operating with deficits for some time now, budget spending lost its investment features, great portions of budgets are used to cover public debt, and the remaining large part is spent on salaries and fees of public employees and on the so-called social categories. In BiH, social payments, with the exception of a number of social programs for the vulnerable groups, cover also payments to civilian victims of war, families of persons killed in war, etc.

The Reform Agenda stipulates the need to perform fiscal consolidation and implement reform measures that will bring about better “targeted” social programs. Namely, the document states that social welfare system must not distort incentives in the economy and must be fiscally sustainable. To achieve these goals, governments of entities, cantons, and Brčko District must improve the targeting of social benefits by implementing packages of measures that will make social welfare policies more efficient, effective and just – which brings us to the conclusion that social payments linked to various wartime harms will be abolished or significantly reduced.

Having in mind that the set of measures foreseen by this document is relevant to social spending in BiH, and the fact that the foreseen measures require significant funding, we think that it would be impossible to implement a reparations program without having a reform of the overall social welfare system. All

payments related to various wartime harms (announced to be abolished or significantly reduced) should be transferred into a war-related reparations program and the current beneficiaries falling into one of the war-related rights categories, but also being in social need, should have their payments increased. On the other hand, war-related reparations to categories of beneficiaries who are not in social need would be paid in one-off or in several instalments, depending on their preferences. We should have in mind that a sound reparations program implementation may be an incentive for achieving reform objectives – social benefits would target those who really need them, and the state would develop and implement a well-timed reparations program. Timely implementation of the reparations program reduces the funds needed by avoiding costs of court proceedings and the trend of court awarded compensations being higher than those stipulated by national reparations programs.

However, due to above reasons, it is not realistic to expect the reparations program to be financed from public budgets, and any new taxation for the financing of the program would be contrary to the set reform objectives. Also, donor funding does not seem realistic, especially having in mind the legal and political repercussions that such financing would have for potential donor states, as well as the fact that the state in which crimes were committed must take over the responsibility for failing to prevent them. By the use of donor funds for reparations, the state or its administration would avoid any type of responsibility. One option is to collect funds from property and/or fines imposed upon convicted war criminals – a realistic and acceptable, but insufficient source of funding.

The final resort is loans, either domestic or foreign. Both FBiH and RS used borrowing in the domestic market by issuing bonds to settle war-related claims. According to data of the Ministry of Finance and Treasury of BiH, internal debt of BiH on December 31, 2014 amounted to BAM 3,298.05 million, excluding liabilities on grounds of restitution. On Dec 31, 2014 FBiH's share in this total internal debt amounted to 33.63%, Republika Srpska 65.74%, and Brčko District 0.63%. FBiH issued bonds for war-related claims on three occasions amounting to BAM 194.41 million with maturity period of 14 years, grace period of 9 years and the interest rate of 2.5%. Republika Srpska issued bonds on nine occasions in the amount of BAM 351.03 million, KM, maturity from 13 to 15 years, grace period of 3 to 5 years and the interest rate of 1.5%. On the other hand, on Dec 31, 2014, the external debt of BiH amounted to BAM 8,218.27 million, where BAM 5,251.71 million related to FBiH, BAM 2,891.67 million to Republika Srpska, and BAM 15.9 million to Brčko District. Even though the total public debt of Bosnia and Herzegovina amounts to BAM 11,516.32 million, we believe that a loan to finance the reparations program would be a good option if the program is developed in the manner suggested by this document – to reduce in long-term the pressure on the budget that the existing system creates, with payments based on acquired rights and not the actual social needs.

In developing a reparations program, it is necessary to base it on a detailed financial analysis that would also include a cost-benefit analysis as well as an assessment of the most favourable financing method, in addition to the projection of the number of beneficiaries, funds needed, dynamics and schedule of measure implementation.





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