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# HEALING THE SPIRIT REPARATIONS FOR SURVIVORS OF SEXUAL VIOLENCE RELATED TO THE ARMED CONFLICT IN KOSOVO

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UNITED NATIONS  
**HUMAN RIGHTS**  
OFFICE OF THE HIGH COMMISSIONER



**UNKT**   
UNITED NATIONS KOSOVO TEAM



EMBASSY OF FINLAND  
PRISTINA

# HEALING THE SPIRIT: REPARATIONS FOR SURVIVORS OF SEXUAL VIOLENCE RELATED TO THE ARMED CONFLICT IN KOSOVO

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A study prepared by an independent consultant, Ms. Victoria S. Rames, as commissioned by the Office of the United Nations High Commissioner for Human Rights - Stand-alone Office in Kosovo



All references to Kosovo in this study should be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

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<sup>1</sup> The Security and Gender Group is a multi-stakeholder group, chaired by UN Women, consisting of women's

# GLOSSARY OF ACRONYMS AND ABBREVIATIONS

AGE	Agency for Gender Equality
BiH	Bosnia and Herzegovina
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
EULEX	The European Union Rule of Law Mission in Kosovo
FBiH	Federation of Bosnia Herzegovina
FRY	Federal Republic of Yugoslavia
FYROM	The Former Yugoslav Republic of Macedonia
GBV	Gender-Based Violence
ICC	International Criminal Court
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IRWC	The Institute for the Research of War Crimes
KCCP	Kosovo Code of Criminal Procedure
KWN	Kosova Women's Network
KLA	Kosova Liberation Army
KP	Kosovo Police Service
KRCT	Kosova Rehabilitation Centre for Torture Victims
LCP	Law on Criminal Proceedings
MLSW	Ministry of Labor and Social Welfare of Kosovo
NATO	North Atlantic Treaty Organisation
NGO	Non-Governmental Organization
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
PCPCK	Provisional Criminal Procedure Code of Kosovo
PHR	Physicians for Human Rights
PTSD	Post-traumatic stress disorder
SFRY	Socialist Federal Republic of Yugoslavia
SFRY CC	Criminal Code of the Socialist Federal Republic of Yugoslavia
SOP	Standard Operating Procedures
UN	United Nations
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNMIK	United Nations Interim Administration Mission in Kosovo
UNSCR	United Nations Security Council Resolution
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
UNSCR	United Nations Security Council Resolution
WCIU	EULEX War Crimes Investigation Unit
WPS	Women, Peace and Security

# 1. EXECUTIVE SUMMARY

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The Office of the United Nations High Commissioner for Human Rights commissioned this study with three primary aims: to highlight the most prevalent consequences of sexual violence committed during the armed conflict in Kosovo; to analyse the current state of affairs with respect to reparations for these crimes; and to highlight the most desirable forms and methods to provide redress for these crimes from the perspective of its survivors.

While sexual violence related to armed conflicts has been increasingly addressed at the international level, notably through the United Nations Security Council, and was explicitly included in the statutes of international jurisdictions, the reparations of such violence remain a major challenge. In the aftermath of an armed conflict, survivors of sexual violence are facing a multitude of difficulties in obtaining adequate reparations.

In this regard, the 2005 United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law [hereafter the UN Basic Principles] represent the most comprehensive international guidelines and principles on remedy and reparation. They affirm that “States should endeavour to establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.”<sup>2</sup> In this respect, the study underlines the lack of such a comprehensive programme in Kosovo for survivors of sexual violence related to the armed conflict. [Section 3]

The study could provide rather clear information on the characterisation of sexual violence during the armed conflict in Kosovo but underlines that there is no accurate data on the incidence of such violence and figures remain incomplete and flawed. However, this should not prevent Kosovo authorities from adopting a reparation programme for the survivors who are already identified. Another loophole highlighted in the study is the lack of information regarding survivors of non-majority communities and male survivors. [Section 4]

The consequences of sexual violence for survivors are thoroughly addressed. The research indicates that nearly fourteen years after the end of the 1999 armed conflict in Kosovo, survivors of sexual violence experience significant physical, psychological, social and economic consequences of the violence that they were subjected to during the armed conflict. They are exacerbated by the generalized absence of any measures of redress and the stigma associated with sexual violence. Due to the absence of a comprehensive reparations programme and to the fact that the Law on the Status and the Rights of the Martyrs<sup>3</sup> does not encompass survivors of sexual violence, only a handful of

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<sup>2</sup> United Nations General Assembly. 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, adopted on 16 December 2005 (A/RES/ 60/147 21 March 2006), Principle 16.

<sup>3</sup> Official Gazette of the Republic of Kosovo. Law No. 04/L.054 on the Status and the Rights of the Martyrs, Invalids, Veterans, Members of the Kosova Liberation Army, Civilian Victims of War and their Families, No. 30, 31 December 2011.

Kosovo non-governmental organizations (NGOs) have filled some of these gaps through the provision of psychosocial support, some medical services, and livelihoods programmes. [Section 5]

In order to develop a reparations programme in line with the UN Basic Principles, and in light of the Bosnian example, the study describes the whole set of measures to be adopted and implemented in order to address all types of reparations, namely restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. In addition to available, accessible and affordable physical and mental-health services, Kosovo authorities should adopt monetary compensation for survivors of sexual violence through an efficient certification system involving designated civil society organizations. The study further underlines that such reparation measures would be better addressed through an amendment of the current Law on the Status and the Rights of the Martyrs, Invalids, Veterans, Members of the Kosova Liberation Army, Civilian Victims of War and their Families. Those reparations should also encompass, among others, a public official declaration to destigmatise sexual violence and to recognize the human-rights violations suffered by survivors of sexual violence. Finally, the prosecution of perpetrators remains a key element in the whole reparations apparatus. This reparations programme will necessitate a major awareness-raising campaign Kosovo-wide. [Section 6]

Finally, the study presents a series of specific recommendations on each major issue which should be addressed [Section 7] in light of more general recommendations:

1. Ensure the centrality of survivors in the design and implementation of reparations programmes (e.g. through consultations and participation throughout the process);
2. Employ a “do-no-harm” approach to the design and implementation of all reparations measures;
3. Design and implement reparations measures for survivors of sexual violence with a primary focus on the multifaceted nature of the violation of rights that took place, rather than on the level of physical disability that resulted from that violation;
4. Amend the Law on the Status and the Rights of the Martyrs, Invalids, Veterans, Members of the Kosova Liberation Army, Civilian Victims of War and Their Families to recognize survivors of sexual violence as civilian victims of war, and consequently amend any relevant legislation;
5. Ensure that reparations measures are not limited to establishing the incidence of conflict-related sexual violence in Kosovo, but rather allow identified survivors to benefit from those reparations measures;
6. Provide reparations to survivors of sexual violence without discrimination, notably based on gender and ethnicity;
7. Adopt a flexible and phased approach to reparations, including flexible procedures and evidentiary standards adapted to the specificities of sexual gender-based violence;
8. Establish a special fund for reparations of survivors of sexual violence (including for rehabilitation, compensation, judicial redress, and awareness-raising).

## 2. INTRODUCTION AND RESEARCH METHODOLOGY

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### 2.1. INTRODUCTION

Though sexual violence took place before and after the armed conflict in Kosovo, this study focuses specifically on the period of the conflict: February 1998 to 19 June 1999. Its victims were of all ethnic groups. This research examines primarily the violence against Kosovo Albanian women, due essentially to the lack of access to information about the violence experienced by members of other aforementioned ethnic groups. Efforts were undertaken to reach individuals and organizations who may have information on survivors from other ethnic groups; however, it was impossible during this research period to collect any relevant information, which would have required additional processing, cross-checking and analyses.

The forces of the Federal Republic of Yugoslavia (FRY) and Serbia committed acts of sexual violence against women and girls. This violence contributed to an atmosphere of fear and oppression to facilitate the expulsion of the population from various locations in Kosovo. There are no reliable and accurate data on the incidence of sexual violence in the armed conflict; however, it is possible to characterise the violence. This violence took place in or near the homes of women and girls, while in (arbitrary) detention, and during flight from Kosovo to Albania and/or the Former Yugoslav Republic of Macedonia (FYROM). It was often committed by more than one perpetrator, and was often exceptionally brutal. It included rape, threatening body searches, beating to force abortion of a child (in the case of pregnant women), humiliation by forcing women and girls to appear naked in front of one or many men, torture and severe physical abuse (including stabbing, beating, biting in the genital area), and threat of rape. Sexual violence was often accompanied by destruction of property (homes, places of worship), and forced servitude (cooking, cleaning).

In addition to sexual violence committed against women and girls, there were also reported acts of sexual violence that were committed against men and boys. Little information is available to provide an in-depth characterisation of the context in which it took place; however, some evidence indicates that it took place during attacks on villages, and also while Kosovo-Albanian men were held in arbitrary detention in Kosovo and Serbia.

## 2.2. RESEARCH OBJECTIVES

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There have been efforts since the end of the armed conflict to advocate for reparations for survivors of sexual violence in Kosovo. There is, however, little research focused on the perspectives of survivors with respect to their access to reparations, and their priorities going forward.

Within this context, the Office of the United Nations High Commissioner for Human Rights (OHCHR) initiated efforts to conduct this research as part of a larger, two-year UN Joint Programme against Domestic Violence (DV) in Kosovo that was launched in 2011 and funded by the Finnish Government.

The specific objectives of the research were the following:

- Objective 1** Characterise the patterns and long-term consequences of sexual violence related to the armed conflict in Kosovo from the perspective of survivors and witnesses, and local and national service providers and key decision-makers.
- Objective 2** Identify and analyse the availability and quality of health, mental health, and socio-economic reintegration services for survivors of sexual violence.
- Objective 3** Identify and analyse the availability and quality of access to justice services for survivors of sexual violence and witnesses, including legal advice and redress and support for prosecutors and judicial investigators.
- Objective 4** Identify and analyse gaps in the legislative framework concerning access to justice, protection measures for persons who have been survivors of sexual violence as well as remedies and reparation.
- Objective 5** Contribute to existing truth-seeking and 'memory' initiatives for documenting and acknowledging conflict-related sexual violence as a human-rights violation and recommend new methods, which can contribute to public understanding and promotion of truth, justice, reparation, and guarantees of non-recurrence.

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<sup>4</sup> Support to addressing Gender-based Violence in Kosovo through Strengthening the Implementation of the Law, National Action Plan, and Strategy against Domestic Violence 2010-2013: A Comprehensive and Inclusive Approach to Address Gender-based Violence in three Pilot Municipalities. The UN Kosovo Team (UNKT) Gender-Based Violence Task Force, comprised of UNDP, UNFPA, UNICEF, UN Women and OHCHR formulated the programme.

The research objectives are considered within the context of international human-rights norms and standards, including but not limited to the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)<sup>5</sup>, the Declaration on the Elimination of Violence Against Women<sup>6</sup>, the United Nations Convention Against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment<sup>7</sup>, the Rome Statute of the International Criminal Court (ICC)<sup>8</sup>, the Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY)<sup>9</sup> and the International Criminal Tribunal for Rwanda (ICTR)<sup>10</sup>, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence<sup>11</sup>; the United Nations Security Council Resolutions (UNSCR) 1325, 1820, 1888 and 1960<sup>12</sup>, and the Nairobi Declaration on Women and Girls' Rights to a Remedy and Reparation.

They are also considered within the context of legislation from the Socialist Federal Republic of Yugoslavia (SFRY) and Kosovo, including the SFRY Criminal Code (SFRY CC)<sup>13</sup> and the SFRY Criminal Procedural Code, the Law on Gender Equality in Kosovo<sup>14</sup>, the Law on Witness Protection<sup>15</sup>, and the Law on the Status and the Rights of the Martyrs, Invalids, Veterans, Members of the Kosova Liberation Army (KLA), Civilian Victims of War and their Families (thereafter the Law on the Status and the Rights of the Martyrs).<sup>16</sup>

<sup>5</sup> Convention on the Elimination of All Forms of Discrimination Against Women, New York, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13.

<sup>6</sup> Declaration on the Elimination of Violence Against Women (A/RES/48/104, 20 December 1993).

<sup>7</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85.

<sup>8</sup> UN General Assembly, Rome Statute of the ICC (last amended 2010), 17 July 1998.

<sup>9</sup> Statute of the International Criminal Tribunal for the Former Yugoslavia (Last amended 2009), 25 May 1993.

<sup>10</sup> Statute of the International Criminal Tribunal for Rwanda (Last amended 2009), 8 November 1994.

<sup>11</sup> Convention on Preventing and Combating Violence against Women and Domestic Violence, Council of Europe, 11 May 2011, CETS 210.

<sup>12</sup> S/RES/1325 (2000), 31 October 2000; S/RES/1820 (2008), 19 June 2008; S/RES/1888 (2009), 30 September 2009; S/RES/1960 (2010), 16 December 2010.

<sup>13</sup> Criminal Code of the Socialist Federal Republic of Yugoslavia, 1 July 1977.

<sup>14</sup> Law No. 2004/2 on Gender Equality in Kosovo, 19 February 2004.

<sup>15</sup> Official Gazette of the Republic of Kosovo. Law No.04/L-015 on Witness Protection, No. 13, 1 September 2011.

<sup>16</sup> Official Gazette of the Republic of Kosovo. Law No. 04/L.054 on the Status and the Rights of the Martyrs, Invalids, Veterans, Members of the Kosova Liberation Army, Civilian Victims of War and their Families. No. 30, 31 December 2011.

## 2.3. RESEARCH METHODOLOGY

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The consultant conducted the research from 1 September 2012 to 31 January 2013. It included a one-month field mission to Kosovo to conduct interviews with key national and international stakeholders and survivors of sexual violence.

The development of the methodology and question guide took place prior to the consultant's arrival in close consultation with OHCHR, and some members of the Sub-group of the Security and Gender Group including UN Women, and the non-governmental organizations (NGO) Kosova Women's Network (KWN), Medica Kosova, and the Kosova Rehabilitation Centre for Torture Victims (KRCT). To characterise the nature and incidence of sexual violence, the consultant conducted a literature review (Annex 4). To characterise the long-term consequences of sexual violence, the consultant conducted a literature review and reviewed data from the Medica Kosova provider database. The consultant, in partnership with Medica Kosova and KRCT, conducted four focus-group interviews with a total of thirty-eight survivors using a question guide designed specifically for that purpose. Further, interviews were conducted with key stakeholders in Prishtinë/Priština and at the regional level in Gjakovë/Đakovica, and focus groups were conducted with Medica Kosova and KRCT to identify the availability of services and gaps in the legislative framework, and to map out existing truth-seeking and memory initiatives (for a list of key stakeholders consulted, refer to Annex 1). For ethical reasons, the team did not pose any questions to survivors regarding their specific experiences of sexual violence.

It is important to note that the consultant made extensive efforts over a period of months to locate non-Albanian survivors of sexual violence in Kosovo, to no avail. As such, all focus-group participants were Kosovo-Albanian women. This is in no way to indicate that women of other ethnic groups did not also experience sexual violence committed by any participants in the armed conflict in Kosovo. The study also does not address in-depth the case of women who experienced sexual violence and then were subsequently killed or disappeared. It is important, however, to consider what type of reparations will be put in place to provide redress to their surviving families. Within this context, it is also essential to determine how these measures will be implemented given that the victims themselves are no longer alive.

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<sup>15</sup> Official Gazette of the Republic of Kosovo. Law No.04/L-015 on Witness Protection, No. 13, 1 September 2011.

<sup>15</sup> Official Gazette of the Republic of Kosovo. Law No. 04/L.054 on the Status and the Rights of the Martyrs, Invalids, Veterans, Members of the Kosova Liberation Army, Civilian Victims of War and their Families. No. 30, 31 December 2011.

## 3. OVERVIEW OF KEY CONCEPTS, AND INTERNATIONAL AND KOSOVO NORMS AND STANDARDS

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### 3.1. OVERVIEW OF INTERNATIONAL DEFINITION AND CATEGORIZATION OF SEXUAL VIOLENCE AS AN INTERNATIONAL CRIME

#### Definition of Sexual Violence

According to the World Health Organization, sexual violence is: ‘any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting.’<sup>17</sup>

#### When is Sexual Violence Conflict-Related?

According to UNSCR 1820<sup>18</sup>, sexual violence is conflict-related “when [it is] used or commissioned as a tactic of war in order to deliberately target civilians, or as part of widespread or systematic attack against civilian populations”<sup>19</sup>. The resolution notes that “civilians account for the vast majority of those adversely affected by armed conflict. Women and girls are particularly targeted by the use of sexual violence, including as a tactic of war to humiliate, dominate, instil fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group.” It is important to note that sexual violence perpetrated in this manner, in some instances, may persist after the cessation of hostilities.<sup>20</sup>

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<sup>17</sup> Krug EG et al., eds. World report on violence and health. Geneva, World Health Organization, 2002, p. 149, < [http://whqlibdoc.who.int/publications/2002/9241545615\\_eng.pdf](http://whqlibdoc.who.int/publications/2002/9241545615_eng.pdf) [11 March 2013].

<sup>18</sup> United Nations Security Council. Security Council Resolution 1820, S/RES/1820 (2008), 19 June 2008.

<sup>19</sup> United Nations Security Council. Security Council Resolution 1820, S/RES/1820 (2008), 19 June 2008, operative paragraph 1.

<sup>20</sup> Ibid., 6th preambular paragraph.

Furthermore, on the basis of the UNSCR 1960<sup>21</sup>, the UN Action Against Sexual Violence in Conflict, developed the “Analytical and Conceptual Framing of Conflict-Related Sexual Violence,” which stated that conflict-related sexual violence has a direct or indirect nexus with the conflict or political strife itself, that is, a temporal, geographical and/or causal link:

- There must be proximity between the act of sexual violence and the period of conflict;
- Acts of sexual violence must occur in conflict-affected areas and;
- The existence of the conflict must have played a substantial part in the perpetrator’s ability or decision to commit sexual violence, the manner in which it was committed or the purpose for which it was committed.<sup>22</sup>

## Sexual Violence as an International Crime

Sexual violence is a criminal act and it may constitute violation of human rights and in situations of armed conflict, a violation of international humanitarian law. The statutes and case law of the International Tribunals for the Former Yugoslavia and Rwanda, the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia, and the ICC Rome Statute, when taken collectively, define sexual violence to encompass: rape, sexual slavery, forced prostitution, forced pregnancy, enforced sterilization and any other form of sexual violence of comparable gravity, which may include indecent assault, trafficking, inappropriate medical examinations and strip searches.<sup>23</sup> The UN Security Council has noted that such violence can constitute a war crime, crime against humanity or constitute an act of genocide.<sup>24</sup>

## Sexual Violence as a War Crime

Under the Rome Statute of the ICC<sup>25</sup>, committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in Article 7, Paragraph 2 (f) and enforced sterilization constitute a war crime in both international and non-international armed conflicts.<sup>26</sup> In addition, any other form of sexual violence also constituting a grave breach of the Geneva Conventions in a situation of international armed conflict, as well as any other form of sexual violence also constituting a serious violation of Article 3 common to the four Geneva Conventions in the case of an armed conflict not of an international character also constitute a war crime.<sup>27</sup>

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<sup>21</sup> United Nations Security Council. Security Council Resolution 1960, S/RES/1960 (2010), 16 December 2010.

<sup>22</sup> UN Action Against Sexual Violence in Conflict. Analytical and Conceptual Framing of Conflict-Related Sexual Violence.

<sup>23</sup> UN Action Against Sexual Violence in Conflict. Analytical and Conceptual Framing of Conflict-Related Sexual Violence.

<sup>24</sup> See United Nations Security Council. Security Council Resolution 1325, S/RES/1325 (2000), 31 October 2000; Security Council Resolution 1820, S/RES/1820 (2008), 19 June 2008; Security Council Resolution 1960, S/RES/1960 (2010), 16 December 2010.

<sup>25</sup> UN General Assembly, Rome Statute of the ICC (last amended 2010), 17 July 1998, [article 8.2(c)]

<sup>26</sup> Ibid., Articles 8.2 (b)(xxii) and 8.2 (e)(vi).

<sup>27</sup> Ibid.

## Sexual Violence as a Crime Against Humanity

Pursuant to the Rome Statute of the ICC, sexual violence may constitute crimes against humanity which include: torture,<sup>28</sup> rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity.<sup>29</sup> Persecution against any identifiable group or collectivity on [...] gender ground in connection with any act referred to any crime within the jurisdiction of the Court also constitutes a crime against humanity.<sup>30</sup> Under the Rome Statute of the ICC, “gender” refers to the two sexes, male and female, within the context of society and does not indicate any meaning different from the above.<sup>31</sup>

Sexual violence may reach the scale or level of organization of a crime against humanity if it is part either of a government policy or a widespread practice of atrocities tolerated or condoned by a government, de facto authority, or organized armed group. Crimes against humanity do not require a connection with armed conflict. This is significant because sexual violence may increase during the unrest that presages conflict and its scale and severity often continue post-conflict.

## Sexual Violence as Genocide

Genocide is defined as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its destruction in whole or in part; imposing measures intended to prevent births within the group; and forcibly transferring children of the group to another group.<sup>32</sup> Sexual violence has been used as a means of group destruction and to alter the composition of territory, particularly in ethnic conflicts. The ICTR, in the Akayesu case, determined that the “acts of rape and sexual violence, as other acts of serious bodily and mental harm committed against the Tutsi, reflected the determination to make Tutsi women suffer and to mutilate them even before killing them, the intent being to destroy the Tutsi group while inflicting acute suffering on its members in the process.”<sup>33</sup> In this way, those acts constituted genocide.

<sup>28</sup> Ibid., Article 7.1 (f)

<sup>29</sup> Ibid., Article 7.1 (g)

<sup>30</sup> Ibid., Article 7.1 (h)

<sup>31</sup> Ibid., Article 7.3

<sup>32</sup> Ibid., Article 6.

<sup>33</sup> International Tribunal for Rwanda. The Prosecutor vs Jean-Paul Akayesu, Case No. ICTR-96-4-T. 2 September 1998, para. 733.

## Sexual Violence as Torture

Pursuant to article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), torture refers to “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is 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. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”<sup>34</sup>

In *Prosecutor v. Delalic [et al], (Celebici)*, the ICTY concluded that rape rose to the level of torture and articulated a standard based on the CAT. It stated that rape constitutes torture if it “(i) causes severe pain or suffering, whether mental or physical, (ii) which is inflicted intentionally; (iii) and for such purposes as obtaining information or a confession from the victim, or a third person, punishing the victim for an act he or she or a third person has committed or is suspected of having committed, intimidating or coercing the victim or a third person, or for any reason based on discrimination of any kind, (iv) and [is] committed by, or at the instigation of, or with the consent or acquiescence of, an official or other person acting in an official capacity. The ICTY commented, however, that rape perpetrated by a state agent will almost always rise to the level of torture because “it is difficult to envisage circumstances in which rape, by or at the instigation of a public official or with the consent or acquiescence of an official, could be considered as occurring for a purpose that does not, in some way, involve punishment, coercion, discrimination, or intimidation.” Because the ICTY found that a public official committed the rapes in Celebici, it determined that the rapes amounted to torture. As a result, the ICTY convicted Delic of violations of Articles 2 and 3 of the ICTY Statute and sentenced Delic to four 15-year sentences; one sentence for each violation in each case of rape.<sup>35</sup> This judgment was upheld in appeal.<sup>36</sup>

Within its jurisprudence, the Committee against Torture specified, in *C.T. & K.M. v Sweden* (279/2005)<sup>37</sup>, that a Hutu woman in Rwanda was repeatedly raped in detention by public officials, and as such was subjected to torture. In *V.L. v Switzerland* (262/2005)<sup>38</sup>, the committee further clarified that the location of the crime committed by public officials is not relevant. In this case, the complainant was repeatedly raped by police outside formal detention facilities in Belarus. Despite the fact that she lodged a report against those police officers, authorities in Belarus appeared to have failed to investigate, prosecute and punish the police for such acts, thus acquiescing to the crime.

<sup>34</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85.

<sup>35</sup> ICTY - *Prosecutor v. Delalic, Mucic, Delic and Landzo (Celebici case)*, Case No. IT-96-21, Judgement of 16 November 1998.

<sup>36</sup> ICTY - *Prosecutor v. Delalic, Mucic, Delic and Landzo (Celebici case)*, Case No. IT-96-21, Appeal Chamber Judgment, 20 February 2001.

<sup>37</sup> Committee Against Torture. CAT/C/37/D/279/2005. 22 January 2007.

<sup>38</sup> Committee Against Torture. CAT/C/37/D/262/2005. 22 January 2007.

## Sexual Violence Against Men and Boys

It has been specified in practice that the prohibition of sexual violence is non-discriminatory – i.e., that men and women, as well as adults and children, are equally protected by this prohibition. Except for forced pregnancy, the crimes of sexual violence in the Rome Statute of the ICC are prohibited when committed against “any person,” not only women. In addition, in the Elements of Crimes Document for the ICC, the concept of “invasion” used to define rape is “intended to be broad enough to be gender-neutral.”<sup>39</sup>

## Definition of (Conflict-Related) Rape

Rape is perhaps one of the most common forms of conflict-related sexual violence. The jurisprudence of the ICTY and ICTR has provided four somewhat different definitions of rape. Specifically at issue in these different definitions is the inclusion of penetration in the definition and coercion of victims. Some definitions (excessively) limit the definition of rape to include sexual penetration of the vagina or the anus of the victim by the penis of the perpetrator. Some definitions are also worded to require proof of coercion or threat of force against a victim by a third person. Other definitions are worded to obviate the need for proof of coercion and consent to rape where coercive circumstances were present.

Specifically, the ICTY considered in its judgment in the *Furundžija* case in 1998 that the objective elements of rape include:

1. The sexual penetration, however slight:
  - a. of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or
  - b. of the mouth of the victim by the penis of the perpetrator;
2. By coercion or force or threat of force against the victim or a third person.<sup>40</sup>

Later on, in 2001, in the *Kunarac* case, however, the ICTY considered that there might be other factors “which would render an act of sexual penetration non-consensual or non-voluntary on the part of the victim” and that this consideration defined the accurate scope of the definition of rape under international law. The ICTR in the *Akayesu* case in 1998 considered that “rape is a form of aggression and that the central elements of the crime of rape cannot be captured in a mechanical description of objects and body parts.”<sup>41</sup> It defined rape as “a physical invasion of a sexual nature, committed on a person under circumstances which are coercive.”<sup>42</sup>

<sup>39</sup> .Assembly of States. Elements of Crimes. Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3-10 September 2002 (ICC- ASP/1/3 and Corr.1), part II.B.

<sup>40</sup> ICTY Judgement for Prosecutor v. Anto Furundžija (IT-95-17/1-T). 10 December 1998.

<sup>41</sup> International Tribunal for Rwanda. The Prosecutor vs Jean-Paul Akayesu, Case No. ICTR-96-4-T. 2 September 1998, para. 597.

<sup>42</sup> Ibid., para. 598..

The ICC Elements of Crimes<sup>43</sup> provide perhaps one of the most precise and comprehensive definitions of rape:

- The Perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or the perpetrator, with a sexual organ or of the anal or genital opening of the victim with any object or any other part of the body; and
- The invasion was committed by force or by the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression, or abuse of power, against such person or another person, or by taking advantage of a coercive environment or the invasion was committed against a person incapable of giving genuine consent.”

Through its jurisprudence and rules of procedure and evidence, the ICTY further establish that the question of consent is irrelevant under the following circumstances:

1. The sexual activity is accompanied by force or threat of force to the victim or a third party;
2. The sexual activity is accompanied by force or a variety of the other specified circumstances that made the victim particularly vulnerable or negated her ability to make an informed refusal; or
3. The sexual activity occurs without the consent of the victim.<sup>44</sup>

The aforementioned jurisprudence from the ICTY and ICTR, and the ICC Elements of Crimes Document raise important questions with respect to the burden of proof not only for the prosecution of cases of rape at the ICTY and ICTR, but also for the likely forthcoming prosecution of conflict-related cases of rape as a war crime in Kosovo. A more elaborate discussion of the prosecution of cases of sexual violence and these issues will take place in Section 6.3.3.

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<sup>43</sup> Assembly of States. Elements of Crime. Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3-10 September 2002 (ICC- ASP/1/3 and Corr.1), part II.B.

<sup>44</sup> ICTY judgment for Prosecutor v. Kunarac, Kovac and Vukovic (IT-96-23-T & IT-96-23/1-T) 22 February 2001, paras. 442-456.

## 3.2. OVERVIEW OF INTERNATIONAL FRAMEWORK FOR REPARATIONS FOR SURVIVORS OF SEXUAL VIOLENCE

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In 1999, the Committee on the Elimination of all Forms of Discrimination against Women established that all Signatories of the Convention should take all legal and other measures that are necessary to provide effective protection of women against gender-based violence, including, *inter alia*:

- Effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including, *inter alia*, violence and abuse in the family, sexual assault and sexual harassment in the workplace;
- Preventive measures, including public information and education programmes to change attitudes concerning the roles and status of men and women;
- Protective measures, including refuges, counselling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence.<sup>45</sup>

In 2005, the UN 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>46</sup> This instrument lays out more precise international guidelines with respect to the right to remedy and reparation for victims of serious violations of international humanitarian law, including sexual violence. The Basic Principles represent the most comprehensive international guidelines and principles on remedy and reparation. They do not create new legal obligations; rather, they draw on existing legal obligations under international humanitarian law. OHCHR subsequently developed a guide on Rule-of-Law Tools for Post-Conflict States: Reparations Programmes, which provides practical guidance on how to render operative the Basic Principles.<sup>47</sup>

The Basic Principles affirm that the “modality of reparation must be proportional to the gravity of the violation.” It can take the form of restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. The definitions of these forms of reparation are listed below:

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<sup>44</sup> ICTY judgment for Prosecutor v. Kunarac, Kovac and Vukovic (IT-96-23-T & IT-96-23/1-T) 22 February 2001, paras. 442-456.

<sup>45</sup> Committee on the Elimination of All Forms of Discrimination Against Women. General Recommendation No. 19, Violence against women, [A/47/38, 29 January 1992], para. 24(t)(i-iii).

<sup>46</sup> 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, adopted on 16 December 2005 (A/RES/60/147, 21 March 2006).

<sup>47</sup> Office of the High Commissioner for Human Rights. Rule-of-Law Tools for Post-Conflict States: Reparations Programmes, 2008

Table 1: Forms and Definitions of Reparations<sup>48</sup>

Form of Reparation	Definition
<b>Restitution</b>	Restitution should, whenever possible, restore the victim to his or her original situation before the gross violations of international human-rights law or serious violations of international humanitarian law occurred, including restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.
<b>Compensation</b>	<p>Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:</p> <ul style="list-style-type: none"> <li>a. Physical or mental harm;</li> <li>b. Lost opportunities, including employment, education and social benefits;</li> <li>c. Material damages and loss of earnings, including loss of earning potential;</li> <li>d. Moral damage;</li> <li>e. Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.</li> </ul>
<b>Rehabilitation</b>	Rehabilitation should include medical and psychological care, as well as legal and social services.
<b>Satisfaction</b>	Satisfaction includes measures to verify the facts and full and public disclosure of the truth, the search for the whereabouts of the disappeared, public apologies, judicial and administrative sanctions against persons liable for the violations, commemorations and tributes to the victims.
<b>Guarantees of Non-Repetition</b>	Guarantees of non-repetition include measures that contribute to prevention such as ensuring effective civilian control of military and security forces, protecting human-rights defenders, providing human-rights education and reviewing and reforming laws contributing to or allowing gross violations of international human rights law.

<sup>48</sup> For additional information, please see Redress. Seeking Reparations for Torture Survivors. Implementing Victims' Rights - A Handbook on the Basic Principles and Guidelines on the Right to a Remedy and Reparation, March 2006 and United Nations Human Rights Council. Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, (A/HRC/14/22, 23 April 2010), paras. 12-85.

This underlying framework for reparations represents a holistic menu of measures that can be implemented to provide remedy and reparations for survivors of sexual violence. In the context of Kosovo, it is important to note that it may be difficult to provide restitution due in particular to the challenges of estimating the economic impact of sexual violence. In this case, reparations programmes should aim to compensate survivors of sexual violence. As well, it is essential to consider “formal and informal obstacles that different groups of women face in accessing and keeping money. These include difficulties in having a bank account and formal and informal pressure, including security threats, reprisal or ostracism by the family and the community.”<sup>49</sup> This is addressed in greater detail in Sections 5 and 6.

### 3.2.1. RESPONSIBILITY TO PROVIDE REPARATIONS

The CEDAW<sup>50</sup> does not explicitly spell out who is responsible for providing reparations for survivors of gender-based violence, including sexual violence. The obligation to provide reparations to women is, however, clearly spelled out in the Declaration on the Elimination of Violence against Women. It places upon the state the duty to develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence.

The UN 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 further clarify that: “States should endeavour to establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.”<sup>51</sup> The responsibility for determining who is liable for the sexual violence that took place during the armed conflict in Kosovo lies with the Kosovo authorities. Liability can be determined either through judicial measures or political agreement. In the absence of legal redress or political agreement between Belgrade and Prishtinë/Priština, the Basic Principles therefore stipulate that the Kosovo authorities have a responsibility to provide reparations to survivors of sexual violence in Kosovo.

Since the violence perpetrated against women generally feeds into patterns of pre-existing and often cross-cutting structural subordination and systemic marginalization, measures of redress also need to consider how to link individual reparation and structural transformation. In addition, women who experience violence have traditionally encountered obstacles to accessing the institutions that award reparations.<sup>52</sup> As such, it is essential that measures of reparation consider how to have the effect of “destroying patriarchal hierarchies.”<sup>53</sup>

<sup>49</sup> United Nations Human Rights Council. Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, (A/HRC/14/22, 23 April 2010), para. 53.

<sup>50</sup> UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13.

<sup>51</sup> 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, adopted on 16 December 2005 (A/RES/60/147, 21 March 2006), principle 16.

<sup>52</sup> United Nations Human Rights Council. Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, (A/HRC/14/22, 23 April 2010), para. 24..

Interview with Ms. Osnat Lubrani, UNKT Development Coordinator and UNDP Resident Representative. 23 November 2012. Nairobi Declaration on Women's and Girls Rights to Remedy and Reparation, March 2007.

<sup>53</sup> Interview with Ms. Osnat Lubrani, UNKT Development Coordinator and UNDP Resident Representative. 23 November 2012.

One way to ensure that reparations destroy, rather than reinforce structural subordination and systematic marginalization is to ensure that decision-making on their design and implementation includes survivors as full participants, while establishing just representation of women and girls in all their diversity. As well, governments and other actors must ensure that women and girls are adequately informed of their rights to reparations.<sup>54</sup> This is explored in greater detail below.

It is also important to note at the outset that some measures may have a reparative effect, but do not distribute benefits to victims of violence themselves based on the violation that took place. In designing reparations programmes for survivors of sexual violence in Kosovo, it is therefore essential to identify whether potential interventions have a reparative effect sufficient to provide redress for violations.

### 3.2.2. IMPLEMENTATION OF REPARATIONS FOR SURVIVORS OF SEXUAL VIOLENCE<sup>55</sup>

Traditionally, national and international judicial institutions are the standard arena for remedial claims in societies dealing with both past and present violations. These institutions are normally motivated by the goal of providing victims with compensation in proportion to harm. They are also significant because they can catalyze the willingness of otherwise reticent governments to establish massive reparations programmes.

The judicial arenas for securing reparations, however, are fraught with challenges. The primary challenge is that in the judicial arena, survivors are likely to experience revictimisation, including exposure to psychological harm, as well as reprisal, stigma, and reproach from their communities and families.

As well, a judicial approach does not normally endorse forms of reparations that have the potential to challenge pre-existing gender hierarchies, including those that result in women holding less property than men, having fewer educational opportunities and, hence, less income-generating potential. It is within this context that “reparations are better located in administrative reparations schemes than by case-by-case judicial adjudications that seek compensation in proportion to harm. Administrative reparations programmes can obviate some of the difficulties and costs associated with litigation, including high expenses, the need to gather evidence, which may sometimes be unavailable, the pain associated with cross-examination and the lack of trust in the judicial system. This may be particularly relevant for women in general and for survivors of sexual violence in particular.”<sup>56</sup>

This approach also has the advantage of allowing more proactive engagement of survivors, their communities, and civil society in the design of reparations programmes. This provides itself a “reparative effect, by conveying a sense of agency.”<sup>57</sup>

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<sup>54</sup> Nairobi Declaration on Women’s and Girls Rights to Remedy and Reparation, March 2007.

<sup>55</sup> The discussion in this section is informed significantly by: United Nations Human Rights Council. Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, [A/HRC/14/22, 23 April 2010].

<sup>56</sup> *Ibid.*, para. 37.

<sup>57</sup> *Ibid.*, para. 39.

The timing of such initiatives is also crucial – having a narrow application deadline to become certified to receive reparations, and subsequent closure of the list, is likely to have a deterrent effect on victims coming forward as they are physically and/or psychologically ready to do so. Sections 5 and 6 address this issue in greater detail, from the perspective of survivors.

In regard to the implementation of successful reparations programmes for conflict-related sexual violence, the following are some general challenges and how they might manifest in the implementation of reparations for survivors of conflict-related sexual violence in Kosovo:<sup>58</sup>

1. Reparations programmes must address not only a large number of individual violations, but also violations that come about in a systematic ways, either as a consequence of the deliberate adoption of abusive policies or as a predictable consequence of other choices. Reparations in these contexts must not only do justice to the victims, but also contribute to re-establishing essential systems of norms, including norms of justice, which are inevitably weakened during times of armed conflict or authoritarianism. These norms are likely to increase impunity and to blame and shame the survivor. Therefore, the goal is to develop an adjusted set of norms that recognizes the crimes that survivors experienced, and empowers them to access reparations (including legal redress).
2. The contexts in which reparations programmes are established are frequently characterized by weak institutional capacity, fractured social relations, and very low levels of trust and financial resources.
3. The violations that reparations are meant to redress are frequently of the sorts that are, strictly speaking, irreparable. This is very much the case for survivors of sexual violence in Kosovo for two reasons. First, they suffered enormously while the sexual violence was taking place. Second, the lack of redress for the initial suffering caused further (unnecessary) damage.

Key factors to ensure successful reparations programmes to address some of the possible weaknesses identified above are the following:

1. **Completeness** (the ability of a programme to reach every victim, i.e. turn every victim into a beneficiary). Whether this happens depends, to some extent, on the way in which the categories of violations that give rise to benefits are determined. The completeness of a programme depends, in part, on the following factors: information about the profile of victims, the participation of civil society networks in the design of reparations programmes; outreach both to design and inform key stakeholders of the design of reparations programmes; and beneficiary ease of access to programme benefits; and setting reasonable evidentiary requirements for victims.
2. **Clear definition of beneficiaries.** Clear definition of the victim, and which types of sexual violence will trigger reparations. Distribution of a creative mix of monetary and non-monetary benefits to ensure greater benefits coverage will go a long way where there are financial constraints prohibiting benefits distribution to all victims.

<sup>58</sup> This section is largely based on OHCHR. Rule-of-Law Tools for Post-Conflict States: Reparations Programmes, 2008.

**3. Types of benefits.** Programmes should aim to distribute a complex mix of benefits (material v. symbolic reparations) to maximize resources and to allow for a better response to the different types of harm that a particular violation can generate, making it more likely that the harm caused can, to some degree, be redressed. In Kosovo, material and symbolic reparations can be distributed individually and collectively to survivors of sexual violence. In particular, symbolic collective reparations can address the psychological suffering of survivors of sexual violence. Furthermore, they are an excellent means to reach survivors who prefer not to be publicly identified in any way.

**4. Defining clear goals of reparations and aligning them clearly with the level and modalities of compensation.**

Reparations programmes should assess the size of the compensation owed in fairness to victims that stems directly from the very violation of rights held in common by human beings and particularly by citizens, and not from each individual's particular position prior to the violation. In other words, the fundamental obligation of a massive reparations scheme is not so much to return the individual to his or her status quo ante, but to recognize the seriousness of the violation of the equal rights of fellow citizens and to signal that the successor regime is committed to respecting those rights. This is often a challenge, as reparations programmes often function more like welfare programmes in that they are not compensatory in the sense espoused by international law, because eligibility is not based a right being violated. Eligibility is based instead on physical disability level, which may or may not correspond with an experience of being a victim of gross violations of human rights and serious violations of international humanitarian law.<sup>60</sup>

The other main justice-related goal that can be attributed to reparations programmes is to make a (modest) contribution to fostering trust among persons and particularly between citizens and state institutions – trust that stems from commitment to the same general norms and values and can exist even among strangers. It also includes a decision whether benefits are to be distributed as lump-sum or monthly payments, and whether to apportion benefits in accordance with pre-set percentages among the family members. Section 6 of this study presents concrete recommendations, from the perspective of survivors of sexual violence, with respect to this issue.

**5. Financing.** Reparations programmes require stable sources of funding. Though there are various modalities for finding reparations programmes, nothing guarantees stability in financing more than a dedicated budget line.

**6. Linking reparations and other transitional justice measures.** Reparations efforts should be designed in such a way as to be closely linked with other transitional justice or redress initiatives, for example, criminal justice, truth-telling and institutional reform.

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<sup>59</sup> Office of the High Commissioner for Human Rights and the Uganda Human Rights Commission. "The Dust Has Not Yet Settled". Victims' Views on The Right to Remedy and Reparation. A Report from the Greater North of Uganda, 2011.

<sup>60</sup> Popić, Linda with Belma Panjeta. Compensation, Transitional Justice and Conditional International Credit in Bosnia and Herzegovina, June 2010.

**7. Differentiate between reparations and post-conflict reconstruction or development.**

Reparations provide direct remedy for the victims of serious violations of international human-rights law and/or serious violations of international humanitarian law. Reparations signify public acknowledgement of the state or perpetrator's commission of harm and/or violations or the state's failure to prevent violation or harms. In contrast, development policies do not entail state responsibility for wrongdoing or acknowledgement that harm has been suffered.

Specifically with respect to **the right to access to justice**, states are bound to:

1. Disseminate, through public and private mechanisms, information about all available remedies for serious violations of international human-rights law and international humanitarian law;
2. Take measures to minimize the inconvenience to victims and their representatives, protect against unlawful interference with their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during and after judicial, administrative or proceedings that affect the interests of victims;
3. Provide proper assistance to victims seeking access to justice;
4. Make available all appropriate legal, diplomatic and consular means to ensure that victims can exercise their rights to remedy for serious gross violations of international human-rights law or serious violations of international humanitarian law.

### 3.3. OVERVIEW OF THE INTERNATIONAL FRAMEWORK FOR LEGAL REDRESS FOR SURVIVORS OF SEXUAL VIOLENCE IN KOSOVO

Pursuant to Article 5 of the Statute of the ICTY, the tribunal is charged with addressing crimes against humanity, specifically for prosecuting persons responsible for rape, torture, and other inhumane acts among other crimes committed in armed conflict, whether international or internal in character, and directed at any civilian population.

Those who have suffered sexual violence are entitled to receive reparations in the form of sanctions against their perpetrators, and public, international recognition of the crimes that have been committed. The ICTY has prosecuted several cases of sexual violence under its mandate.

<sup>61</sup> 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, adopted on 16 December 2005 (A/RES/60/147, 21 March 2006), Principle 12. In addition the United Human Rights Council specifically recognized in its 2012 resolution on human rights and transitional justice that sexual and gender-based violence, particularly in conflict and post-conflict situations, affects victims, families, communities and societies, and stressed that effective remedies in those situations should include access to health care, psychosocial support, legal assistance and socioeconomic reintegration services for victims of such violence (A/HRC/RES/21/15, 27 September 2012).

<sup>62</sup> Statute of the International Criminal Tribunal for the Former Yugoslavia (Last amended 2009), 25 May 1993.

## 3.4. OVERVIEW OF THE KOSOVO FRAMEWORK FOR REPARATIONS FOR SURVIVORS OF SEXUAL VIOLENCE

In Kosovo, the Law on the Status and the Rights of the Martyrs<sup>63</sup> is the primary piece of legislation that guides reparations for civilian victims of war and their families, although it is largely focused on military victims of the armed conflict. It defines three categories of (living) civilian victims of war: “civilian invalid of war,” “civilian hostage of war,” and “civilian victim of war.” The definitions of different categories of victims as presented in Table 2, are widely excluding persons with non-physical disability and do not define the meaning of ‘enemy forces.’ According to the law, the following are the definitions of each category of beneficiary, and the reparations to which they are entitled:

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<sup>63</sup> Official Gazette of the Republic of Kosovo. Law No. 04/L.054 on the Status and the Rights of the Martyrs, Invalids, Veterans, Members of the Kosova Liberation Army, Civilian Victims of War and their Families. No. 30, 31 December 2011).

**Table 2: The Definition of Reparations Schemes under the Law on the Status and the Rights of the Martyrs, Invalids, Veterans, Members of the Kosova Liberation Army, Civilian Victims of War and their Families**

Category of Victim	Definition	Compensation and Rehabilitation
<b>Civilian Invalid</b>	The person, whose organism has been damaged at least 40% due to wounds received from weapons, disease acquired in the camps or prisons during the recent war in Kosovo, since 27 February 1998 till 20 June 1999, and other persons, whose organism has been damaged at least 40% as a result of explosive devices left after the end of war.	Civilian Invalids of War with 40% disability or greater are entitled to a base civil disability pension; civilian invalids of war with over 80% of body damage, shall be exempted from the tax and customs duty for import of orthopaedic devices for his personal needs; and civilian invalids of war with over 80% degree of disability are entitled to allowances for assistance and care by another person.
<b>Civilian Victim of War</b>	The person who has died or got[ten] wounded, by the enemy forces from period 27 February 1998 up to 20 June 1999, as well as the persons who have suffered as a consequence of the war within three (3) years after the war ended from explosive devices left out from the war."	Close members of the family of civilian victims of war, according to the terms and criteria set forth in the law, shall realize the following rights and benefits: family pension; primary and secondary health care without compensation in public health-care institutions; and release from taxation on property, if the close family is in difficult financial situation; and cheap and reduced tariff of electricity consumption for personal use, if the close family is in difficult economic conditions and it fulfils criteria set up in the scheme of social assistance.
<b>Civilian Hostage of the War</b>	The civilian person, who during the war has been arrested and imprisoned in enemy camps for at least three (3) days respectively seventy-two (72) hours.	Same benefits as the close family of a civilian victim of war.
<b>Missing Civilian Person</b>	A person whose whereabouts is unknown to his or her family members and who based on reliable information was reported missing during the period between 1 January 1998 and 31 December 2000, as a consequence of the war in Kosovo during 1998-1999.	Same benefits as the close family of a civilian victim of war.

The Office for the Issues of the Categories Emerged from War is responsible for maintaining the central registry for the martyrs of the nation, KLA invalids, veterans, the members of the KLA, and deported KLA, civilian victims and civilian invalids of war.

The law does not specify in theory or in practice that survivors of sexual violence are considered to be civilian invalids, civilian hostages of war, or civilian victims of war. At the time that the law was being discussed, there were advocacy efforts from local NGOs, Medica Kosova and the KRCT, to include specific references to, and provisions for survivors of, sexual violence. However, these advocacy efforts were unsuccessful due to resistance from senior Kosovo authorities. As a consequence, survivors are not entitled to any compensation or free rehabilitation services to provide redress for the violations of their rights.<sup>64</sup> They are only entitled to compensation as individuals or family members of those who fall under other categories of violations specified in the law. They may also benefit from similar types of benefits not under the guise of reparations, but under the rubric of government welfare (social protection) schemes to address the needs of poor or vulnerable persons. This stands in contrast with the Federation of Bosnia and Herzegovina (FBiH), where survivors of violence are recognized as civilian victims of war, and thus entitled to redress based on that status.

Another key component of the law is that it establishes official mechanisms to commemorate and pay tribute to civilian (and other) victims of the war. Again, however, it does not specifically recognize or make provisions to provide redress for the violation of the rights of survivors of sexual violence. This stands again in contrast to FBiH, where the inclusion of survivors of sexual violence in the law provides symbolic recognition of the abuses that they suffered.

It should also be underlined that, on 22 February 2012, the Kosovo authorities established a working group to develop an Action Plan for the Implementation of UNSCR 1325. The Agency for Gender Equality (AGE), under the auspices of the Prime Minister's Office, is the agency leading the development of the 1325 Action Plan. The action plan includes a special section on survivors of sexual violence related to conflict and it addresses their access to justice, rehabilitation and economic empowerment measures. The action plan was not finalized at the time of the writing of this study.

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<sup>64</sup> Rogova, Igballe (Kosova Women's Network). Supporting Women Survivors of Sexual Violence in Kosovo, Presentation for Conference for Victims of Conflict-Related Sexual Violations, 5-6 September 2012.

### 3.5. OVERVIEW OF THE KOSOVO FRAMEWORK FOR LEGAL REDRESS FOR SEXUAL VIOLENCE

All crimes under international law committed between 1998-1999 have been, and continue to be prosecuted under Article 142 of the SFRY CC, which lists criminal offences against the civilian population during war, conflict or occupation.<sup>65</sup> Those who commit the aforementioned acts are to be punished by imprisonment for not less than five years or by the death penalty.<sup>66</sup> The SFRY CC provides for criminal prosecution of rape and forcible prostitution, and also for other offences that often accompanied them. They include: killings, torture, inhumane treatment, immense suffering or violation of bodily integrity or health, illegal arrests and detention, and property confiscation. Two of the main weaknesses of the SFRY CC are that it does not actually provide a precise definition of rape, and also fails to include other forms of sexual violence prevalent during the armed conflict in Kosovo, such as forced abortion, sexual slavery/servitude, and gang rape. Another deficiency of the SFRY CC is that it does not explicitly criminalize crimes against humanity.

Although not applicable for crimes under international law committed in the context of the Kosovo armed conflict, the 2003 Provisional Criminal Code of Kosovo (introduced under UNMIK Regulation No 2003/25 and amended in 2008) and the 2012 Kosovo Criminal Code are more far-reaching.<sup>67</sup>

Similarly, the Law on Criminal Proceedings of the SFRY (LCP) was applicable in Kosovo until 6 April 2004, when the Provisional Criminal Procedural Code of Kosovo (PCPCK) introduced under UNMIK Regulation No. 2003/26 was adopted. The PCPCK makes it clear that the LCP remains applicable for proceedings in which the indictment had been filed before the entry into force of the PCPCK until the final judgment. Once a final decision has been delivered, extraordinary remedies are currently ruled by the 2008 Criminal Procedure Code of Kosovo, which is largely similar in content to the PCPCK.

<sup>64</sup> Rogova, Igballe (Kosovo Women's Network). Supporting Women Survivors of Sexual Violence in Kosovo, Presentation for Conference for Victims of Conflict-Related Sexual Violations, 5-6 September 2012.

<sup>65</sup> Criminal Code of the Socialist Federal Republic of Yugoslavia, 1 July 1977, Article 142.

<sup>66</sup> The death penalty was abolished by UNMIK Regulation No. 2000/59.

<sup>67</sup> They both include provisions for the investigation and prosecution of crimes against humanity (Article 117), and other forms of sexual violence beyond rape and forcible prostitution. More specifically, they mandate the investigation and prosecution of cases of "imprisonment or other severe deprivation of physical liberty, torture, rape, sexual slavery, enforce prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity." Despite these improvements, they fail again to offer a more precise definition of the offence of rape.

## 3.6. REPARATIONS IN KOSOVO: LESSONS LEARNED FROM BOSNIA AND HERZEGOVINA

One way to think about the current absence of reparations and the direction in which reparations can go in Kosovo is to compare it with Bosnia and Herzegovina (BiH). There is no doubt that the armed conflict in BiH differs markedly in many ways from that in Kosovo in terms of scope, ethnicity of targeted civilian populations, demography, and duration.

The experience in BiH is extremely pertinent nonetheless because it is one to which activists and key decision-makers in Kosovo refer in order to shape their thinking about reparations for survivors of sexual violence. Key stakeholders engaged in the process of administering or monitoring reparations in BiH are engaged in constant dialogue with their counterparts in Kosovo to share lessons learned. The aim of these dialogues is to offer key stakeholders in Kosovo to learn from their counterparts in BiH with respect to both opportunities seized and missed toward informing a more effective reparations framework in Kosovo. The discussion below aims to capture these dialogues and lessons learned.

BiH is comprised of two entities – the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska – and Brčko District, governed by a local government. There is no comprehensive framework for reparations for survivors of sexual violence in BiH. There has been a process for drafting a national law on the rights of victims of torture and civilian victims of war, which was initiated in 2010. The law is intended to give all civilian victims of war, across the country, equal access to specific social benefits and other measures of social support that they need as a result of the violations they suffered during the war. To date, the law has not been approved.<sup>68</sup>

Republika Srpska does not have a specific legal framework for survivors of sexual violence. There is a general lack of any initiative on the part of authorities in Republika Srpska to address the issue of wartime rape. This is reflected by the inadequate legal recognition of wartime rape survivors. The current Law on the Protection of Civilian Victims of War in Republika Srpska guarantees special measures of social protection – largely in the form of financial assistance – to people who suffered at least 60% damage to their bodies as a result of torture, assault, rape, or other crimes committed in the course of the armed conflict. Those who qualify under the law are entitled to a pension, as are all civilian victims of war and disabled persons.<sup>69</sup> Applications for this status were accepted up until 2007. The assessment of bodily damage was conducted by health commissions on the basis of the rulebook criteria for estimation of military disabilities, which does not refer to psychological damage. This excludes large portions of survivors of sexual violence who cannot provide medical documentation to provide 60% physical damage or whose “damage” is largely psychological.<sup>70</sup>

<sup>68</sup> Amnesty International. When Everyone is Silent: Reparations for Survivors of Wartime Rape in Republika Srpska in Bosnia and Herzegovina, December 2012.

<sup>69</sup> Note: This is technically not a compensation scheme but rather a welfare scheme because all disabled persons are grouped together under the same line item in the RS budget.

<sup>70</sup> Amnesty International. When Everyone is Silent: Reparations for Survivors of Wartime Rape in Republika Srpska in Bosnia and Herzegovina, December 2012.

FBiH does, however, have some specific measures of reparations available to survivors of sexual violence. In FBiH, survivors of rape may apply to be recognized as civilian victims of war under the Law on the Basis of the Social Protection, Protection of Civilian Victims of War and Families with Children.<sup>71</sup> The law stipulates that all survivors, regardless of their level of bodily damage, are entitled to reparations. This stands in contrast to other civilian victims of war who must establish a level of physical disability of 60%.<sup>72</sup>

In FBiH, there is a threefold process for acceding the status of a civilian victim of war to a person who has suffered sexual assault or rape:

1. The issuance of a certificate by the Association “Žena-žrtva rata” – Sarajevo (the NGO Association Women Victims of War).<sup>73</sup> Survivors present themselves to the NGO based in Sarajevo, provide testimony, and in 99% of cases, receive a certificate indicating that they have experienced sexual violence. This certificate provides symbolic recognition of the crime of sexual violence for survivors, even if they do not choose to go forward with their request for compensation and access to free public rehabilitative services. The certificate is also a required for petitions for compensation and rehabilitative services. One challenge with the certification process is that there are no psychologists on staff at the aforementioned NGO to interview survivors. As well, survivors are required to sign a statement authorizing their testimony to be used as part of criminal proceedings against those charged with war crimes.<sup>74</sup> Furthermore, the NGO does not have the capacity to provide follow-up medical, mental-health or counselling services; though there are other NGOs in BiH that do provide these services.<sup>75</sup>
2. With the certificate in hand, survivors must then gather documentation to further substantiate that they have experienced sexual violence. This includes obtaining copies of their medical records from the medical-service providers that have treated them. Such providers include: mental health centres, hospitals, private doctors and NGOs such as Medica Zenica (Zenica) and Snaga Žene (Tuzla). The aforementioned NGOs, as well as the Zenica Centre for Legal Assistance for Women (Zenica), also assist survivors with the process of gathering documentation.
3. Once documentation is complete, survivors must submit it to a Municipal Level Commission for its consideration. The commission in turn calls survivors to an interview. After the interview, the commission reviews the case in its entirety and issues a response within a couple of months. It is worth noting that the commission is usually comprised of only one person, normally not a psychologist. As well, this person normally serves on a rotating basis with other individuals, which likely creates losses of information and capacity. If a survivor receives a negative response to her petition for survivor status, she can appeal to a commission at the canton level.<sup>76</sup> The canton level serves as the second-level units of local autonomy and federal units of FBiH. There are 79 municipalities that are spread out across FBiH's 10 cantons.

<sup>71</sup> Official Gazette of the Federation Bosnia and Herzegovina. Law on Basic Social Protection, Protection of Civilian Victims of War and Protection of Families with Children [36/99, 54/04, 39/06 and 14/09.

<sup>72</sup> Popić, Linda with Belma Panjeta. Compensation, Transitional Justice and Conditional International Credit in Bosnia and Herzegovina, June 2010.

<sup>73</sup> The Government of FBiH selected this NGO to provide this certification to survivors of sexual violence.

<sup>74</sup> Popić, Linda with Belma Panjeta. Compensation, Transitional Justice and Conditional International Credit in Bosnia and Herzegovina, June 2010.

<sup>75</sup> Interview with Lejla Hadzimesic, Amnesty International Bosnia Herzegovina Researcher. 4 October 2012.

<sup>76</sup> Interview with Sabiha Husić, Director, Medica Zenica. 26 November 2012. Email Communication with Lejla Mamut, Human Rights Coordinator, Swiss Association against Impunity. 13 December 2012.

To date, the commission has certified approximately 900 women as survivors of sexual violence, which may be falling short of the total number of alleged survivors who experienced sexual violence in the FBiH. Once accorded the status of civilian victim of war, the FBiH Law on Civilian Victims of War states that survivors of sexual violence are entitled to a monthly pension (of approximately 506 BAM or 259 euros), health care, housing, vocational training and legal aid, and support in accessing medical and psychological care. By virtue of their inclusion in the Law on Civilian Victims of War, survivors of sexual violence also receive some measure of official recognition for the crimes committed against them and the ongoing impact of those crimes on their lives. "Recognition as a civilian victim of war is very important for survivors as a form of symbolic acknowledgement of the crimes committed against them."<sup>77</sup> This recognition, however, is rather limited. There is only public memorial and virtually no public statements.<sup>78</sup>

It is important to note that in practice, the FBiH is largely unable to provide the rehabilitative services to survivors recognized under the law. The burden has thus fallen on NGOs to fill this gap in services. As well, according to Amnesty International, "many women do not [for example] have health insurance on the basis of their status as civilian victims of war. Some of the women have health insurance through their husbands or as part of other welfare entitlements. Others have none at all, leaving them with only very limited and inadequate access to health care."<sup>79</sup>

In addition, there are also challenges with respect to the sustained funding of those benefits. Within this context, the International Monetary Fund and the World Bank have indicated that the government must cut its social-welfare budget to be eligible for future loans.

To address the lack of clarity about how to apply the laws and resource allocation to implement them, Medica Zenica is facilitating the development of Standard Operating Procedures (SOP) or "Operational Protocol on Mutual Cooperation of Institutions in the Provision of Support to Victims/ Witnesses in War Crimes Cases, Sexual Violence and other Kinds of Criminal Offenses" in several cantons. The SOPs for Zenica and Central Bosnia Cantons were completed in 2011. The process for developing SOPs in Banja Luka (Republika Srpska) and Una-Sana Canton (FBiH) began in September 2012. The process of developing the SOPs includes training all key service providers at the canton level (including the Center for Social Work, Center for Mental Health, NGOs, police, prosecutors, judges, department for employment, Ministry of Health, Ministry of Education, Ministry of Justice). It also includes the development of a referral pathway for survivors, allocation of responsibilities to all providers in the network, and a monitoring and evaluation framework, in particular to ensure that all survivors, regardless of background, receive quality treatment.<sup>80</sup>

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<sup>77</sup> Amnesty International. *Old Crimes, Same Suffering: No Justice for Survivors of Wartime Rape in North-East Bosnia and Herzegovina*, March 2012.

<sup>78</sup> Personal email communication with Lejla Hadzimesic, Amnesty International BiH Researcher. 29 January 2013.

<sup>79</sup> Amnesty International. *Old Crimes, Same Suffering: No Justice for Survivors of Wartime Rape in North-East Bosnia and Herzegovina*, March 2012.

<sup>80</sup> Interview with Ms. Sabiha Husić, Director, Medica Zenica – Bosnia. 26 November 2012.

With respect to judicial redress for cases of sexual violence, in particular in relation to judicial and administrative sanctions against persons liable for the violations, very few cases of sexual violence have been prosecuted at the ICTY or by state and entity courts in BiH. According to the director of Medica Zenica, out of the tens of thousands of alleged crimes of sexual violence against women, fewer than 40 cases have been prosecuted since by the aforementioned courts.<sup>81</sup> There is no publicly available information about the number of such cases under investigation and prosecutions related to charges of rape and other forms of sexual violence either at the state court or entity level.<sup>82</sup>

According to the 2008 National Strategy on War Crimes Processing, the War Crimes Chamber of the State Court of BiH in Sarajevo is responsible for prosecuting the most “complex” cases of crimes under international law committed during the armed conflict. Cases of multiple or systematic rape, or the establishment of sexual slavery detention centres are, by their very nature, “complex.”

Entity courts are responsible for prosecuting “less complex” cases, such as single incidences of rape. In 2010, war crimes cases at the entity level were redistributed according to where the crimes were committed, as part of an initiative to bring coherence to the management of the war crimes caseload throughout BiH. At the same time, re-allocation of cases between the state and the entity level according to their complexity began. The results of this adjustment are not clear. Impunity for wartime sexual violence in BiH is exacerbated by a lack of resources and inadequate facilities in the courts. Some survivors do not want to testify publicly but, for those who do, local courts lack basic facilities to prevent further trauma. Though local NGOs do provide legal, logistical and psychosocial support to accompany survivors in this process, greater resources are definitely needed.<sup>83</sup>

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<sup>81</sup> Ibid.

<sup>82</sup> Amnesty International. Bosnia and Herzegovina: Submission to the UN Human Rights Committee. For the 106th Session of the Human Rights Committee (15 October-2 November 2012).

<sup>83</sup> For more information about the prosecution of cases of sexual violence in BiH, see Association Alumni of the Centre for Interdisciplinary Postgraduate Studies (ACIPS). Prosecution of Wartime Sexualized Violence at the Court of Bosnia And Herzegovina: What Happened to the Interest of Justice? An analysis and recommendations on Gender Sensitive Trial Monitoring for Wartime Sexualized Violence Cases in Bosnia and Herzegovina for the period 23/05/2011 – 25/05/2012, November 2012.

## 4. CHARACTERISATION AND INCIDENCE OF SEXUAL VIOLENCE

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### 4.1. CHARACTERISATION OF SEXUAL VIOLENCE

Conflict-related sexual violence rarely takes place without the existence of some norms or propaganda to promote gender discrimination prior to the armed conflict. The armed conflict in Kosovo is no exception. The seeds for conflict-related sexual violence in Kosovo were planted through official state propaganda in SFRY prior to the armed conflict. The propaganda focused on dehumanizing and stereotyping Kosovo-Albanian women as indiscriminately fecund.

#### Patterns of Sexual Violence

The FRY and Serbia forces committed acts of sexual violence against women and girls throughout Kosovo before and during the North Atlantic Treaty Organization (NATO) bombing campaign. In certain municipalities, however, there is greater documentation of the occurrence of sexual violence (in particular, rape). These municipalities include: Prishtinë/Priština, Deçan/Dečani, Glogoc/Glovovac, Skënderaj/Srbica, Pejë/Peć, Gjakovë/Đakovica, Prizren, and Rahovec/Orahovac. The perpetrators of sexual violence were usually identified either as Serb police or paramilitaries. However, there is also documentation that Kosovo-Albanians also committed acts of sexual violence against Roma women, in particular during the period immediately following the armed conflict.<sup>85</sup> As well, there is some limited documentation that Kosovo-Albanian men committed acts of sexual violence against Kosovo-Serb women.

With respect to sexual violence committed by the FRY and Serbia forces, the use of sexual violence amounted to a slight on the honor of the family, i.e. to inflict shame and humiliation on them, but to destroy the social fabric of the society as well. These intentions are evidenced in the comments made to women and girls while the violence was taking place, and specific choices that the perpetrators made while committing crimes of sexual violence. They include:

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<sup>84</sup> UNIFEM. No Safe Place: An Assessment of Violence Against Women in Kosovo, 2000

<sup>85</sup> Humanitarian Law Center. Kosovo Roma: Targets of Abuse and Violence. 24 March – 1 September 1999, 1999.

1. Perpetrators attempted to obtain information about the whereabouts of male family members as suspected members of the KLA during the violence.
2. Perpetrators made comments indicating that they were punishing women and girls for male family members' suspected affiliation with the KLA.
3. Perpetrators generally did not violate women and girls who were menstruating (indicating that the intention of rape was to ethnically cleanse the Kosovo-Albanian population).<sup>86</sup> One survivor recounts how upon "discovering that her daughter was menstruating, Serb police and paramilitaries decided [not to rape her daughter but] to mistreat and rape her instead."<sup>87</sup>
4. Perpetrators separated men from women, and often killed male family members. This had the effect of destroying the social fabric of the Kosovo-Albanian families.
5. Perpetrators physically abused pregnant women with the intention of forcing the abortion of their unborn child. One survivor, who was pregnant at the time of the Serb [forces'] invasion of her village, recounts how "Serb [forces] kicked her many times [in the abdomen] and left her lying on the floor."<sup>88</sup>
6. Perpetrators made verbal comments to women and girls that they were being punished for the presence of NATO in Kosovo.
7. By committing acts of violence against women and girls, the perpetrators intentionally emasculated and humiliated Kosovo-Albanian men. The men felt ashamed at having been unable to defend the honour of their women relatives.<sup>89</sup> "By raping women – taking possession and totally exploiting the female body – the Serb [forces were] violating even those Kosovo men who [were] inaccessible and hidden in the mountains."<sup>90</sup>

<sup>86</sup> Human Rights Watch. Rape as a Weapon of Ethnic Cleansing, 1999.

<sup>87</sup> Medica Kosova Documentation. Survivor 1.

<sup>88</sup> Medica Kosova. Documentation, Survivor 2.

<sup>89</sup> UNFPA. Gender-Based Violence in Kosovo, 2005.

<sup>90</sup> UNFPA. Assessment Report on Sexual Violence in Kosovo. May 1999.

## Characterising the Circumstances of Sexual Violence

Conflict-related rape and other acts of sexual violence can be categorized according to the circumstances and time period in which they took place. Women were reportedly raped in their houses when their villages were under siege,<sup>91</sup> and during flight from Kosovo to Albania and/or the FYROM. For example, cases of rape were reported on the train to the border or at the railway station in Prishtinë/Priština.<sup>92</sup> Women (including young women) were reportedly separated from men and kept in places such as armament factories, mosques, and schools, where sexual violence often took place.

The abuse that took place in or near the homes of women and girls usually occurred in similar circumstances, beginning first with the robbery of items of value (if any existed), and then followed by the perpetration of different forms of sexual violence with and without other family and community members present. As one survivor explains, “the Serb police and paramilitary forces besieged our house and pushed us out.... Serb forces asked for money and objects of value. They stole what they wanted. In the meantime, they beat all of the poor people [who had no objects of value]. Then two men dragged me down and sent me to a room where they raped me. When they were finished, they put me outside, kicked me hard and forced me to enter a tractor together with my children and the other women of my family. Serb forces held my brothers, husband and brother-in-law, and since then no one has seen them again. We left on the tractor and went to Albania, where we stayed until the end of the war.”<sup>93</sup>

Another survivor recounts a similar ordeal, “Serb police and paramilitaries entered with force into my house. They beat everyone in my family and threatened them with their guns. They also robbed every single piece of jewellery and all of our money. Then they sent all the men and children outside in the garden. The Serb [forces] grabbed my sister-in-law and me and sent us to the second floor of the house. They put us in our own bedrooms and raped us brutally. They raped us so brutally that we were even terrified to leave the house. But the Serb [forces] ordered us downstairs and to leave the house. We gathered with all of the villagers and started walking. After we walked for about 500 metres, we saw our house on fire. We ended up in another village, where Serb [forces] forced us in some empty houses. There they raped my sister-in-law and me again. My husband and brother-in-law ‘disappeared’ during this time. Only after the war their bones were found.”<sup>94</sup>

In some cases, perpetrators returned more than one time to rape women and girls in or near their homes. One survivor recounts how the Serb police and paramilitary forces forced her to serve food and alcohol and wash their clothing. Then they got drunk, “and raped all of the women of my family – two by three persons each. In the early hours of the morning, the Serb [forces] left. But by the next day, they came back again. They ate, drank, and then started filling their sexual needs again up until the next morning. A week later, Serb police and paramilitaries put my whole family out in the yard and forced us to switch on the lights of the house. They moved everyone outside to be killed by NATO. In the evening, as they predicted, NATO started bombing. Two bombs hit the house and killed my husband and two brothers-in-law.”<sup>95</sup>

<sup>89</sup> UNFPA. Gender-Based Violence in Kosovo, 2005.

<sup>90</sup> UNFPA. Assessment Report on Sexual Violence in Kosovo. May 1999.

<sup>91</sup> United Nations Commission on Human Rights. Report of the High Commissioner for Human Rights on the Situation of Human Rights in Kosovo, Federal Republic of Yugoslavia, [E/CN.4/2000/10, 27 September 1999].

<sup>92</sup> Ibid.

<sup>93</sup> Medica Kosova. Documentation, Survivor 3.

<sup>94</sup> Medica Kosova. Documentation, Survivor 4.

<sup>95</sup> Medica Kosova. Documentation, Survivor 5.

The violations that took place in arbitrary detention were often of the most brutal character because they usually occurred over a period of days and at the hands of multiple perpetrators. One survivor recounts that “I returned to my village [after a few days of being away], I saw chaos – some houses were ruined and some were burning. I had no idea where my family could be. Totally shocked, I did not know what to do and started walking to another family member’s house. Along the way, a Serb forces vehicle appeared. Together with my niece, the vehicle picked me up. It stopped at a factory. There the Serb [forces] separated males from females. They sent the females to a big hall and told us to stay there until they asked for us. At night, they turned on the music very loud in order to cover the women’s noises. One night, they grabbed me together with my sister and brought us to another part of the building. I saw naked women and girls, wailing and bleeding and being raped. Then I got dizzy and fainted. When I opened my eyes, I saw two men [standing] over me and they were laughing. I realized that I was naked on the floor. I then also realized that I had been raped, and that my sister had gotten raped, too.”<sup>96</sup>

The violations that took place during flight from Kosovo occurred both on the lines themselves, and also away from the lines in arbitrary detention. One survivor’s testimony to OHCHR<sup>97</sup> provides a harrowing example of how women were violated in the lines:

“When the residents gathered together, [Serb forces] separated the men. Shortly thereafter, I heard shots on the way to the bus station and saw the bodies of about 20 men lying behind the paramilitary trucks. At the bus station, a policeman took my youngest son from my arms and then beat me when I tried to take him back. It was there also that I saw my father, mother, sister and brother for the last time. They are [now] reported missing. From the bus station, a policeman ordered the group to go to the railway station, where people went onto wagons waiting for their departure to Macedonia. The departure was delayed for six hours; during this time, an unestimated number of paramilitary came into the wagons and raped about 10-15 young girls in front of everyone, including young children. Finally, the train left for Blace, where I stayed for 10 days with my two children. I had almost no food. From Blace, I was sent to Tirana by bus.”

It is also important to note that in some cases, women who experienced sexual violence were subsequently killed or disappeared. Though this is not addressed in detail in this study, it is absolutely essential to consider these cases in the development and implementation of any forthcoming reparations measures.

<sup>96</sup> Media Kosova. Documentation, Survivor 6.

<sup>97</sup> Office of the High Commissioner for Human Rights Kosovo Emergency Operation. Documentation from OHCHR Protection and Human Rights Monitoring, 1999.

## Timeframe of the Sexual Violence

Though sexual violence began to take place before the beginning and after the end of the armed conflict in Kosovo, this study focuses specifically on the period of the armed conflict: February 1998 to 19 June 1999. Documentation from Human Rights Watch, Physicians for Human Rights, and national NGOs and government sources highlight that Serb forces intensified immensely all forms of human-rights violations, including sexual violence, during the period from March 1999 to June 1999. This is the period during which the NATO air strikes took place in Kosovo and elsewhere in FRY. During this time, there are increased reports of women being forcibly kept for hours or days and raped in public buildings or private homes. In particular, during their kidnapping from their homes or while fleeing their homes, women and girls were held hostage or detained in buildings throughout Kosovo. Women and young women were intentionally separated from men and taken to holding centres to be 'checked,' interrogated, and in some cases, raped or mistreated in other ways. Such buildings included old barns, private houses, even university buildings, in their village or in other villages or towns.

## Forms of Sexual Violence

The forms of sexual violence perpetrated during the armed conflict in Kosovo include: rape (in particular gang rape), threatening body searches, beating to force abortion of a child (in the case of pregnant women), humiliation by forcing women and girls to appear naked in front of one or many men, torture and severe physical abuse (including stabbing, beating, biting in the genital area), and threat of rape. Officers also threatened to rape or commit other types of sexual violence against women and girls in their homes and in detention. In some cases, these threats were not followed up by action if women gave up their valuables – such as money or jewellery. As well, sexual violence was often accompanied by destruction of property (homes, places of workshop), and forced servitude (cooking, cleaning, and enduring frequent sexual assault and rape and other torture).<sup>98</sup>

Two other key characteristics of the sexual violence are that there was often more than one perpetrator (up to ten in number) and that the sexual violence (in particular rape) was exceptionally brutal.

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<sup>98</sup> Women's Wellness Centre (Peja) and the Reproductive Health Response in Conflict Consortium. Prevalence of Gender-Based Violence: Preliminary Findings from a Field Assessment in Nine Villages in the Peja Region, Kosovo, December 2006; Human Rights Watch. Rape as a Weapon of Ethnic Cleansing, 1999.

## Sexual Violence against Men and Boys

In addition to sexual violence committed against women and girls, there are also reportedly acts of sexual violence that were committed against men and boys. Little information is available to provide an in-depth characterisation of the context in which it took place. Some evidence indicates that it took place during attacks on villages, and also while Kosovo-Albanian men were held in arbitrary detention in Kosovo and Serbia. The IRWC indicates that it has heard only of a few individual cases that took place largely in prisons. The only available published information from the Organization for Security and Co-operation in Europe (OSCE) highlights, “a man recounting that officers ‘made us take off our clothes and lie down. They beat us with wooden clubs, on every part of the body, back and head. They also put our penises (mine too) on a table and beat them.’”<sup>99</sup> It is likely that very little documentation exists because this is an enormous source of shame for the men who experienced this violence. As well, some may fail to recognize this type of violence as a weapon of war, and instead view it inaccurately as some form of pathological behavior.

## Sexual Violence Against Kosovo Non-Albanian Communities

There is limited documentation of cases of sexual violence against Kosovo non-Albanian communities.<sup>100</sup> The consultant, in partnership with OHCHR and other stakeholders, made extensive efforts over a period of months to locate, in particular, non-Albanian survivors to no avail. Outreach to NGOs in and out of Kosovo, including to the Humanitarian Law Centre in Belgrade, produced no results.

OHCHR documented at least one case of a Serb woman who had been raped in Prishtinë/Priština. She stated that she remained in Prishtinë/Priština because she believed that her honesty and her age would be respected. On 15 July 1999, one person entered her flat, grabbed her by the hair and put a pistol to her head. Three other men also entered the apartment. She was pushed to the floor of her kitchen and hit with a gun several times, and she was raped by two of the men.<sup>101</sup>

A human-rights defender also reported to OHCHR that he/she had received indirect threats after having spoken publicly that acts of sexual violence against non-Albanians were allegedly committed by KLA members.

<sup>99</sup> Sivakumaran, Sandesh. *Sexual Violence against Men in Armed Conflict*. EJIL[2007] Vol. 18 No. 2, 253-276.

<sup>100</sup> It is important to note that the majority of defendants in these cases were acquitted of the crimes of sexual violence included in the initial indictment. For more detailed information, please refer to Sections 6.3.2 and 6.3.3.

<sup>101</sup> United Nations Commission on Human Rights. Report of the High Commissioner for Human Rights on the Situation of Human Rights in Kosovo, Federal Republic of Yugoslavia, (E/CN.4/2000/10, 27 September 1999).

## 4.2. INCIDENCE OF SEXUAL VIOLENCE

Accurate data on the incidence of sexual violence against women and girls are not available. None of the main Kosovo official bodies (IRWC) or local NGOs (Council of Human Rights and Freedoms and Humanitarian Law Centre) were able to provide these data. At this point in time, fourteen years after the end of armed conflict, it is important to reflect whether it would be possible to gather these data. Various available reports provide very limited information covering different periods of the armed conflict. Of equal importance is to consider whether it would be useful for Kosovo authorities and human-rights NGOs to expend enormous efforts to identify the total number of survivors. With an eye toward reparations, the research indicates that one case of sexual violence is a world in and of itself. This means that simply providing reparations to the survivors who have already been identified or who are willing to come forward would be very meaningful. Furthermore, it would likely be of enormous symbolic value to those survivors who decide not to come forward.

With these questions and disclaimers in mind, the existing available data on the number of cases are for different timeframes and in some cases overlap with one another. It is therefore not possible to draw any conclusions about the total incidence of sexual violence in Kosovo from these data. However, the existing literature provides the following data: OSCE documented 72 cases of sexual violence from October 1998 to June 1999.<sup>102</sup> Human Rights Watch reported about six cases until December 1998 and 96 after March 1999.<sup>103</sup> The High Commissioner for Human Rights in her report covering the period before June to August 1999, to the then-Commission on Human Rights reported 14 confirmed or suspected cases of rape and further indicated that the number of incidents may be higher.<sup>104</sup>

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<sup>102</sup> OSCE, 'Kosovo as Seen, as Told'. An analysis of the human rights findings of the OSCE Kosovo Verification Mission, October 1998 to June 1999, 1999.

<sup>103</sup> Human Rights Watch. Rape as a Weapon of Ethnic Cleansing, 1999.

<sup>104</sup> United Nations Commission on Human Rights. Report of the High Commissioner for Human Rights on the Situation of Human Rights in Kosovo, Federal Republic of Yugoslavia, (E/CN.4/2000/10, 27 September 1999).

## 5. CONSEQUENCES OF SEXUAL VIOLENCE AND ACCESS TO SERVICES/SURVIVAL STRATEGIES

### 5.1. PHYSICAL CONSEQUENCES OF SEXUAL VIOLENCE

According to a report from the Kosovo Women's Network and the United Nations Population Fund (UNFPA), the physical consequences and damage of sexual violence (as well as other forms of gender-based violence), can be categorized in the following manner:<sup>105 106</sup>

- Contusions, abrasions, minor [and major] lacerations, as well as fractures or sprains;
- Injuries to the head, neck, chest;
- Self-inflicted cuts to the wrist or arms;
- Injuries during pregnancy;
- Chronic pain, psychogenic pain (psychologically induced pain, normally non-specific in nature) or pain due to diffuse trauma without physical evidence;
- Urinary tract Infections;
- Sexually transmitted diseases;
- Damage to sexual organs and anus;
- Physical symptoms related to stress, chronic post-traumatic stress disorder or depression;
- Sleep and appetite disturbances;
- Fatigue, decreased concentration;
- Chronic headaches;
- Abdominal and gastrointestinal complaints;
- Palpitations, dizziness and dyspnoea (a non-specific skin irritation, without obvious case);
- Atypical chest pain.

The current research in Kosovo, as well as that from other locations focused on domestic violence, establishes a clear causal relationship between the experience of sexual violence and specific illnesses or physical ailments. In some cases, it is a direct causal relationship. In others, the research indicates that the violence weakens the cardiovascular, gastrointestinal, endocrine and immune systems through chronic stress or other mechanisms,<sup>107</sup> which in turn creates an enabling environment for other illnesses.

<sup>105</sup> Kosova Women's Network/UNFPA. Exploratory Research on the Extent of Gender-Based Violence in Kosova and its Impact on Women's Reproductive Health, 2008.

<sup>106</sup> Rames, Victoria and Camara, Havanatou. Training Guide on the Clinical Management of Sexual Violence. Prepared for EngenderHealth Workshop in Guinea-Conakry, January 2012.

<sup>107</sup> For more information, see Eugene Kinyanda, Seggane Musisi, Christine Biryabarema, Isaac Ezati, Henry Oboke, Ruth Ojiambo-Ochieng, Juliet Were-Oguttu, Jonathan Levin, Heiner Grosskurth, James Walugembe. War Related Sexual Violence and its Medical and Psychological Consequences as seen in Kitgum, Northern Uganda: A cross-sectional study, BMC Int Health Human Rights 2010; 10(1): 28; Center for Disease Control (United States). Intimate Partner Violence: Consequences, 26 September 2012.

Another consequence of sexual violence is unwanted pregnancy. Numerous data sources confirm unwanted pregnancy in cases of rape of women that took place during the armed conflict in Kosovo. Many women had abortions, or had children and in some cases, killed their children due to the emotional trauma of bearing children conceived in rape (infanticide).<sup>108</sup> Miscarriage or “spontaneous abortion” was also a significant consequence of sexual violence, resulting from rape, physical abuse or stress resulting from the violence.

As well, specific damage to reproductive organs is also a consequence of sexual violence. This damage may include haemorrhages, ruptures (including fistulae), pelvic inflammatory disease, and/or bruises to the reproductive organs, and other genital infections and sexual dysfunction. In the focus groups, survivors specifically mentioned:

- Recurrent headaches and pain in legs (and other areas of the body) due to beatings on specific areas of the body that survivors endured while being violated;
- Hypertension;
- Hysterectomies due to tumours in the reproductive organs or due specifically to damage to the reproductive organs caused by the violence;
- Stomach aches, for which several women have required surgery;
- Sciatica that began during the armed conflict due to being forced to remain in one position for long periods of time;
- Problems with the gallbladder, and subsequent removal of the gallbladder;
- The inability to breastfeed infants due to lack of milk;
- Heart problems and atypical chest pain;
- The inability to have children after having an abortion (to abort a child conceived as a result of rape);
- Feelings of pain in the parts of the body where survivors were grabbed during acts of sexual violence.

These findings are in line with the aforementioned KWN/UNFPA data, as well as international research on the consequences of sexual and intimate partner (domestic) violence. It is worth mentioning that this list of health consequences provided by survivors is likely incomplete because some survivors were clearly uncomfortable sharing detailed information about their physical ailments in the presence of other participants in the focus group. As well, these data are not exhaustive because they represent only those illnesses and disorders of the participants in the focus group who represent only of a subset of the total population of sexual-violence survivors.

In addition to the direct consequences of sexual violence, women also lacked access to health services during the armed conflict, which likely exacerbated their initial injuries. In particular, the destruction of physical health infrastructure, and the abuse against as well as forced disappearance of medical-health professionals during the armed conflict had a significant indirect impact on women’s ability to recover physically and psychologically from sexual violence and to obtain services for their children.

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<sup>108</sup> The Observer. Rape Victims’ Babies Pay the Price of War, 16 April 2000.

## 5.2. AVAILABILITY OF MEDICAL CARE AFTER THE ARMED CONFLICT

There was a systematic rise in violations of medical neutrality by Serb authorities before the beginning of the armed conflict in Kosovo, and before and after NATO bombings. Prior to the beginning of the armed conflict in the early 1990s, Serb authorities fired many ethnic Albanian health-care providers from their positions in government, and other health-care providers resigned in protest. During the armed conflict, there was intentional destruction of medical facilities, military use of medical facilities, and the expulsion of patients and/or medical workers from facilities. There were also killings of medical professionals, restrictions in the movement of medical workers to hinder them from treating their patients, death threats against medical professionals, and in some instances, holding medical professionals hostage.<sup>109</sup> This is likely to have had a significant impact on the ability of survivors of sexual violence to receive medical treatment during the armed conflict. It also likely had an impact on their willingness to seek medical treatment.

Since the end of the armed conflict, authorities have ignored this reality and not provided any health services to survivors beyond those publicly available to the general population. Currently, certain categories of individuals qualify in theory for free health-care services in Kosovo. Under the 2004 Kosovo Health Law, the following categories of individuals are entitled to receive free health care:<sup>110</sup>

1. Children and adolescents up to 15 years of age;
2. Pupils and students until the end of regular school terms;
3. Citizens over 65 years of age;
4. Citizens, [who are] close family members of martyrs, war invalids and other invalids, their close family members as well as users of overall social schemes for social assistance and close members of their families; and
5. Persons with disabilities.

The 2011 Law on the Status and the Rights of the Martyrs further clarified that martyrs, invalids, veterans, members of the KLA and civilian victims of war are entitled to free health-care services.

In practice, however, these categories of individuals are only released from paying a participation fee of two to three euros, per visit, for public health-care visits. Due to Kosovo budget constraints, they are otherwise required to pay for medicines (including those on the essential list of medicines), lab fees, and other related costs.

<sup>109</sup> Physicians for Human Rights. War Crimes in Kosovo. A Population-Based Assessment of Human Rights Violations Against Kosovar Albanians, 1999.

<sup>110</sup> Law No. 2004/4 on Health, 19 February 2004, Section 22.

Survivors of sexual violence are not entitled to receive free health-care services as a measure of redress for the crimes of sexual violence that they experienced. The only survivors of sexual violence who are released from paying the participation fee are:

1. Those who qualify as citizens, [who are] close family members of martyrs, war invalids and other invalids, and their close family members;<sup>111</sup>
2. Those who qualify under the Health Care Law; including survivors over 65 years of age; survivors who receive social assistance; and survivors with disabilities.

Among the survivors who participated in the focus groups, the most common circumstances under which they are released from the participation fee are having a disability, being responsible for the care of a family member with a disability, or having income below a certain level and children under five years of age. These survivors, like all other citizens in Kosovo, must pay for medicines, lab fees and other related costs, as do others who are entitled to free health care and those who are not. To exacerbate the situation further, some survivors (like many others) are referred by public-health doctors to their private clinics, where they charge significantly more for supplies and exams.

As a result, survivors have had to develop a complex set of survival strategies to meet their health-care needs. Some survivors have counted on the income of family members living in Kosovo or remittances from family living abroad to cover the cost of medication, laboratory exams, supplies and/or surgeries. Other survivors have submitted petitions for assistance to cover these costs to the Ministry of Health, sometimes to no avail. Finally, in rare cases, survivors who have a higher level of financial support from family members living abroad have purchased private health insurance. Therefore, the survivors who are clearly in the most dire situations are those who do not receive support from other family members in Kosovo or abroad to pay for lab fees, medications, and other related costs.

In addition to the challenges with paying for medical care, the services that survivors of sexual violence are by and large not survivor-centred – i.e. they did not and continue not to maintain the respect, confidentiality, safety and security of survivors.<sup>112</sup> It is important to note that one of the main reasons why the services are not survivor-centred is that medical providers have never received any training in this area. Some examples of the practical implications of a lack of a survivor-centred focus in health care are provided below:

- Many health-care service providers do not aim to minimize the retraumatization of survivors of sexual violence that often takes place during a gynaecological exam. Service providers can minimize retraumatization by explaining the process of the gynaecological exam and helping survivors to address any anxiety related to the exam. In Kosovo, only Medica Kosova and the KRCT have employed this approach.
- All focus-group survivors highlighted a lack of confidentiality in both the public and private health-care systems. According to a UNFPA Programme Specialist, the lack of confidentiality among health-care providers is an issue for all patients. However, it is even more pronounced where a

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<sup>111</sup> Official Gazette of the Republic of Kosovo. Law No. 04/L.054 on the Status and the Rights of the Martyrs, Invalids, Veterans, Members of the Kosova Liberation Army, Civilian Victims of War and their Families. No. 30, 31 December 2011.

<sup>112</sup> Rames, Victoria and Camara, Havanatou. Training Guide on the Clinical Management of Sexual Violence. Prepared for EngenderHealth Workshop in Guinea-Conakry, January 2012.

survivor's health condition is overtly and clearly related to gender-based violence (GBV)."<sup>113</sup> It is possible that recent advances to develop Guidelines and Protocols for the Healthcare Provider Identification, Treatment and Referral of Victims of GBV will address the issues of confidentiality and quality of care that all survivors of GBV face. It is recommended that efforts to legislate reparations for survivors also consider how to maximize the confidentiality of survivors of conflict-related sexual violence.

In the virtual absence of affordable, survivor-centered public and private medical care, several local NGOs have also stepped in to provide primary medical care for survivors, and to advocate within Kosovo institutions the coverage of survivors' needs, on an individual basis. In particular, the NGOs KRCT and Medica Kosova have played a key role in this area. These have used personal contacts with health-care providers in the Prishtinë/Priština and Gjakovë/Đakovica areas, respectively, to ensure on an ad-hoc basis that survivors can access the medical care that they need. From 2000-2011, Medica Kosova also provided gynaecological services, including breast-cancer screening to survivors of sexual violence. The Minister of European Integration has successfully advocated with the Ministry of Health for the provision of free basic medications to benefit survivors of sexual violence who seek out services at the KRCT in Prishtinë/Priština. Specifically, on 24 October 2012, the Ministry of Health signed a Memorandum of Understanding with KRCT to provide free medications for one year. This is a first step in a bottom-up approach to guaranteeing a minimal level of survivor access to rehabilitative services.

In sum, any reparations scheme must consider how to ensure that survivors have access to quality, survivor-centered rehabilitative health services. As such, efforts to amend the Law on the Status and the Rights of the Martyrs to include survivors of sexual violence must incorporate appropriate training on survivor-centred care for service providers, and budget for free supplies, exams, and medications for survivors. Other measures to cover these costs are also addressed in Section 6.

<sup>113</sup> Interview with Dr. Visare Nimani, Programme Specialist, UNFPA, 12 October 2012.

<sup>114</sup> Medica Kosova. Personal email Communication, 15 November 2012.

## 5.3. MENTAL HEALTH CONSEQUENCES OF SEXUAL VIOLENCE

A high prevalence of psychological distress and mental disorders has been documented in survivors of sexual violence in areas of armed conflict. For example, in a population-based survey in Liberia, Johnson and colleagues found higher rates of post-traumatic stress disorder (PTSD), depression, and suicidal ideation in a sample of former combatants who experienced sexual violence (both male and female) compared to those who did not experience sexual violence.

According to the World Health Organization, psychological/mental-health consequences of conflict-related sexual violence may include:

- Non-pathological distress (such as fear, sadness, anger, self-blame, shame, sadness or guilt);
- Anxiety disorders (including PTSD and rape trauma syndrome);
- Depression;
- Medically unexplained somatic complaints;
- Alcohol and other substance use disorders;
- Suicidal ideation and self-harm.

Survivors of sexual violence frequently experience symptoms of PTSD. PTSD appears to be more common in persons who were threatened with a weapon and/or extreme physical force, in those raped by strangers, and in cases where physical injuries were inflicted. Symptoms of PTSD may manifest as intrusions and avoidance. Intrusions involve reliving the experience and include:

- Flashbacks;
- Nightmares;
- Recurrent, intrusive thoughts that stay in the mind

Avoidance symptoms include:

- Feelings of numbness;
- Self-imposed isolation from family, friends and peers;
- Intellectualizing the incident;
- Distractions;
- Increased drug or alcohol use;
- Engaging in high-risk behaviors;
- Avoiding places, activities or people that remind them of the assault.

Nearly 14 years after the end of the armed conflict in Kosovo, survivors of sexual violence in the focus groups expressed that they continue to experience significant psychological consequences of the sexual violence that they suffered during the armed conflict. Many also experience psychological consequences resulting from having witnessed violence against other family and community

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<sup>115</sup> Johnson, K., Asher, J., Rosborough, S., Raja, A., Panjabi, R., et al. Association of Combatant Status and Sexual Violence with Health and Mental Health Outcomes in Post-Conflict Liberia. *JAMA*, 2008, 300(6), 676-690.

<sup>116</sup> World Health Organization. *Mental Health and Psychosocial Support for Conflict-Related Sexual Violence: Principles and Interventions*, 2012.

<sup>117</sup> World Health Organization. *Guidelines for Medico-legal Care for Victims of Sexual Violence*, 2003.

members, and from experiencing the death and disappearance of family members during the armed conflict.

During the focus groups, some survivors were able to recognize and describe the consequences resulting from sexual violence, witnessing violence and losing family members. This was due in large part to the ongoing counselling that they have received from NGO service providers. One survivor in the Prishtinë/Priština region highlights, “We are not physically wounded. We are spiritually wounded.” This indicates that although the immediate physical injuries of the violence have likely healed, the survivors recognize that they continue to suffer significant psychosocial consequences related to the violence that they endured. Other survivors participating in the focus groups were unable to recognize and describe the psychological consequences of the sexual violence, at least within the focus-group context. This is likely due to their desire to avoid re-living any of the painful emotions that would remind them of the trauma of sexual violence.

Survivors in the focus groups specifically mentioned many of the mental/psychological consequences and disorders, as well as the symptoms of those disorders described above. In terms of **anxiety disorders**, the survivors expressed that they had experienced many of the symptoms. There are many different anxiety disorders, whose symptoms often overlap with one another. The consultant was unable to determine to which type of anxiety disorder the symptoms corresponded because of her lack of training in this area. More importantly, the short timeframe and the focus on the “collective” experience in the focus-group discussions made it impossible to do so. Given these constraints, the section below focuses on some of the symptoms common to several anxiety disorders, without attributing them to a specific anxiety disorder.

During the focus groups, survivors mentioned feeling paralyzed by stress and feeling nervousness and anxiety. They also mentioned having extensive mood swings in which they would suddenly feel very depressed or begin yelling at their children or other family members. One survivor recounts, “feeling unable to think clearly.”

The majority of survivors mentioned experiencing many of the symptoms of post-traumatic stress disorder. In terms of “**intrusions**,” many survivors recounted having flashbacks in particular when seeing the places in their village where they were raped or when seeing soldiers. One woman mentions, “I see places in my community where they raped us.” Another recounts, “I confuse KFOR soldiers in my area with Serb soldiers, and then I begin to panic.” The survivors also mention having difficulty sleeping and having terrible nightmares. Their nightmares are related to sexual violence, and also to the loss of family members. One participant in the focus group mentions how, “when going to sleep, I began to wonder how my husband died and if he suffered before he died.” Some women also have developed a fear of loud noises; one survivor recounts how she “jumps when hearing a door slamming or kids playing with soccer balls.”

In terms of “avoidance”, many women displayed an inability to acknowledge that sexual violence took place. Self-imposed isolation was also common. As one survivor explains, “I feel unable to contribute to family life.” Others mention experiencing numbness, such as an “inability to cry.”

Beyond the symptoms of anxiety disorders, survivors also recount having symptoms of depression. One focus group participant mentions, “crying every night while sleeping.” Others recount “feeling very stressed out for years after the war” and having “serious depression” and “not being able to eat anything because of the depression.”

Survivors in all focus groups recounted having medically unexplained somatic complaints. One survivor explains that she “has headaches when I think about what I experienced.” Another recounts “having pain in the same place that the Serbs grabbed me.”

Suicidal ideation and self-harm was also somewhat common among the focus-group participants. In the four focus groups, only a few survivors mentioned that they had suicidal thoughts or had attempted suicide. One woman explains that, “only God helped me not to kill myself.” Suicidal ideation and self-harm is likely under-reported in the focus groups due to a reluctance to discuss this sensitive subject in front of other participants in the group.

Due to the shame of having experienced sexual violence, and becoming pregnant as a result of rape, some survivors also mentioned, “not wanting to keep babies conceived of rape.” Some participants mentioned abortions. Outside of the focus-group context, there is also additional documentation of survivors of sexual violence not wanting to keep babies conceived of rape and consequently giving them up for adoption or killing them once they were born (infanticide).

Finally, some survivors appear to suffer from the symptoms of prolonged grief disorder, which is a syndrome consisting of a distinct set of symptoms following the death of a loved one that are so prolonged and intense that they exceed the expectably wide range of individual and cultural variability. Symptoms include yearning intensely for the person, identity confusion, difficulty accepting the loss, bitterness, emotional numbness, inability to trust others and feeling stuck in grief. These are present every day, cause significant distress and functional impairment and remain intense, frequent and disabling for six months or more after the death. One survivor, who lost her husband during the war, recounts how “for many years, my husband was missing. I was always waiting for him. I refused to believe he was dead.”

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<sup>118</sup> The Observer: Rape Victims’ Babies Pay the Price of War, 16 April 2000.

<sup>119</sup> Frances, A. When Good Grief Goes Bad, The Huffington Post, 28 February 2012.

## 5.4. AVAILABILITY OF MENTAL HEALTH CARE AFTER THE ARMED CONFLICT

According to UNFPA, tackling the emotional scars left behind by the outrage [of sexual violence] in Kosovo has presented a huge challenge because the requisite support of family and the community was not always forthcoming.<sup>120</sup>

As of 2007, there were 40 psychiatrists available for 1.7 million inhabitants in Kosovo within the public mental-health system; which is the equivalent to one psychiatrist for every 43,350 inhabitants. In other countries of the Organisation for Economic Co-operation and Development (OECD), the ratio is one psychiatrist for every 5,000 to 10,000 inhabitants.

At the secondary level, there are Community-Based Mental Health Centres (out-patient), Integrated Houses, and psychiatric units (as part of the general hospital in each region) that provide mental health-care services.<sup>121</sup>

The Community-Based Mental Health Centres are oriented toward people with chronic issues and a long history of severe mental-health disorders, usually those pre-dating the armed conflict. The integrated houses are oriented to those who are not able to live with their families or who have no family left. They have a capacity of 70 users in total in Kosovo.

The Psychiatric Clinic of the University Clinic Centre of Kosovo based in Prishtinë/Priština has a supra-national function and is used by other mental-health facilities and families throughout Kosovo as the last possibility for treatment. The clinic became a place for “storing” chronic patients since the former Social Institute of Shtime lost its function as an asylum and is not allowed to admit new patients.

According to the Kosovo Health Foundation, the scope and range of mental-health services provision is unlikely to expand at a fast pace in the near future. “Recent initiatives such as the new residency programme in clinical psychology, ongoing family therapy training, plans to implement community-based resilience building measures and psychodynamic and cognitive behavioural therapy training, are of utmost importance to facilitate human capacity building within the existing mental health facilities. In time, these developments will change the scope and range of Mental Health Service Provision. For the time being, however, the funds actually allocated to develop mental health professionals and to expand the network of mental health institutions barely cover 20 per cent of the needs identified in the Action Plan for the Health Sector Strategy (2010-2014). The public health sector currently employs 7,265 professionals and the Kosovo authorities pledged to keep staff level unchanged until 2014.”<sup>122</sup>

<sup>120</sup> UNFPA. Gender-Based Violence in Kosovo: A Case Study, 2005.

<sup>121</sup> Kosova Health Foundation. Current Situation in Mental Health and Mental Health Care Provision, 2012.

<sup>122</sup> Ibid.

Of equal importance is that the public mental-health system in Kosovo is not oriented toward survivors of sexual violence, or in general toward those individuals with mental-health disorders related to trauma experienced during the armed conflict. It is within this context that Medica Kosova, Medica Gjakova and KRCT have been providing mental-health services to survivors of sexual violence since immediately after the end of the armed conflict in Kosovo.

Five NGO-run women's shelters in Pejë/Peć, Prizren, Prishtinë/Priština, Gjakovë/Đakovica, and Gjiilan/Gnjilane also provide psychosocial support to survivors of intimate partner violence, but this support is not expressly for survivors of sexual violence (though there may be an overlap between the two). In addition, some survivors indicated that the staff members of some organizations providing humanitarian assistance have also tried to provide psychosocial assistance. In the absence of appropriate qualifications, however, survivors highlight that this support likely did more harm than good. In sum, besides those services provided by Medica Kosova and KRCT, and more recently Medica Gjakova, there have been virtually no public or private mental-health services available to survivors of any kind of gender-based violence, including conflict-related sexual violence.

## Does Counselling Provide Rehabilitation?

One key question is whether survivors of sexual violence believe that the psychosocial support and counselling provided by Medica Kosova and KRCT have served a rehabilitative role, and thus provided them with some redress for the violations that they suffered. The focus-group data made it clear that psychosocial support has been essential for their emotional and spiritual well-being. For example, one participant in a focus group in Gjakovë/Đakovica area indicated that, "If Medica Kosova did not come [to support us psychologically], I would be in a very bad situation." Similarly, survivors receiving support from the KRCT highlight that "there is the KRCT programme since 2002. If you had seen us some years ago, you would not recognize us." In sum, the psychosocial support from these institutions has been essential for the psychological well-being of survivors, in particular in the absence of any other substantive support from public or private mental health-care providers.

Besides the support from NGOs, survivors also adopted personal survival strategies such as "trying to be positive that they are still alive," "self-counselling between women who experienced the same or similar things," and "talking with members of the community about our war experiences in general, but not [specifically] about the [sexual] violence."

## Psychosocial support: Essential for access to reparations

The evidence from the focus groups highlights that psychosocial support has served numerous functions in the lives of the survivors of sexual violence who have received it. Those roles are enumerated below:

1. Psychosocial support is absolutely essential for the emotional, psychosocial, and social well-being of survivors of sexual violence as an end in and of itself. According to one survivor from the Gjakovë/Đakovica region, “we cannot be okay if we do not receive this help;”
2. The focus-group data also revealed that psychosocial support has enabled survivors to be able to speak more openly about the sexual violence that they experienced and to understand that they are victims of a crime, not responsible for the crime that befell them. The consultant noted, in particular, that a minimum of six months of counselling was necessary for survivors to be able to achieve this awareness and willingness to speak with others about what took place;
3. This level of awareness and the ability to speak about what took place is also essential for survivors to be able to recognize that they are entitled to reparations. It is also crucial for giving survivors a voice to articulate their rights to reparations – namely increased and improved access to rehabilitative services, compensation, legal redress and public recognition of the crimes that they have suffered;
4. It will also likely be a key factor in survivors’ willingness to come forward and take advantage of any future reparations measures, including compensation and judicial redress. This includes the ability to withstand any possible future stigmatisation that would likely take place when community members discover why they are suddenly benefiting from reparations (in particular, compensation). In a roundtable hosted by UN Women on 5/6 December 2012, the European Union Rule of Law Mission in Kosovo (EULEX) War Crime Investigations Unit (WCIU) stated succinctly that rehabilitation and other kinds of support determine to a large degree the willingness and ability of survivors and witnesses to testify in court, upon which the success rate of sexual violence war crimes investigation and prosecution depends. Moreover, only by having survivors and other witnesses testifying, war-crime trials can contribute to the establishment of the truth about past atrocities, provide redress for survivors, and promote reconciliation.<sup>123</sup> Quality therapy, in particular, creates a relationship of trust between counsellor and survivor, and a level of awareness and preparation, which can be extended to the relationship between the EULEX investigators and survivors. Annex 3 provides an overview of the main NGOs that are providing rehabilitative, as well as legal, services to survivors of sexual violence.

<sup>123</sup> UN Women Roundtable, Status and Situation of Survivors of Conflict Related Sexual Violence, 5/6 December 2012 in Priştinë/Priština and Gjakovë/Đakovica.

## 5.5. SOCIAL CONSEQUENCES OF SEXUAL VIOLENCE

Survivors of sexual violence mentioned significant social stigmatisation, which has had significant consequences for their own lives and those of their families and communities. At the root of the stigmatisation of survivors is the belief that survivors are responsible for the violence that befell them. Also at the root is the meaning of sexual violence for survivors and their families and communities. It is viewed as an assault not only on the women or girls, but also on the honour of the whole family and community. The consequences of the stigmatisation for survivors whose families have become aware of the violence take many forms.

The most basic consequence of the stigma is shame – shame of the survivor, and also the family and community. This has resulted in a series of secondary consequences. For example, some survivors have been abandoned by their husbands. One woman explains, “I told my husband myself what happened and he left me with the children and never showed up again. Now I live on social assistance.”

Women who were not married before the armed conflict also suffered. One survivor explains, “Some young women who were raped never succeeded to find a husband.” Unmarried survivors in all focus groups indicated that they were stigmatized not only by prospective husbands, but also by prospective mothers-in-law. One survivor explains that she herself “would prefer that her son marry a whore rather than marry a woman who has been raped.”

In addition to this form of rejection, survivors also experience generalized rejection and abuse from their families, partners and communities. Some internalize this stigmatisation and abuse by isolating themselves. One survivor explains that, “I do not go to parties because of the stigma that I was raped.” Also as a result of the stigma, many survivors of sexual violence remain “closed in their houses ... with the trauma still in their head.”<sup>124</sup>

Though “only few women have had the luck to have support from their families,” some families and communities treat survivors better than others. As one survivor indicates, “how people look at women who experienced this violence depends on the mentality. Some see them as criminals and that they should be ashamed. I would like to have TV shows to show people that we are not bad.” This points to the need for awareness-raising to destigmatise conflict-related sexual violence, in particular within the family and community.

Knowing the possible social consequences of the stigmatisation, few survivors have or are willing to admit to having been raped or sexually abused during the armed conflict because they fear ostracism from their family and community. This fear, compounded by inadequate support services, is believed to be a major obstacle to disclosure. The stigma of rape is so deep that it is often stated that a “good” woman would rather kill herself than continue to live after having been raped.

<sup>124</sup> Interview with Mr. Afrim Caka, Former Political Prisoner, Association of Former Political Prisoners of Kosovo. Mr Caka conducted a house-to-house survey of 3,600 homes in Gjakovë/Đakovica to document to crimes that took place in Gjakovë/Đakovica during the conflict. 19 October 2012.

Survivors requiring protection from their very own communities and family members is seemingly illogical until one considers the purpose of the sexual violence – to destroy the core family structure by shaming women. Bringing sexual violence to light would bring further shame and chaos to the family unit as a whole. Every member of the family – including survivors of sexual violence, brothers, fathers, and fathers-in law of the survivor, and especially mothers and mothers-in-law of the survivor – has an interest in not addressing the violence. Addressing sexual violence is likely to touch a raw nerve and the very concept of family community honour. Until there are greater efforts to destigmatise the violence that women experienced during the armed conflict in Kosovo, women will require continued protection to be able to feel safe and empowered to respectively come forward and seek justice as victims and/or witnesses.

There are also significant socio-economic consequences of the stigmatisation, which are explored in greater detail in Section 6.3.

## 5.6. AVAILABILITY OF SOCIAL SERVICES AFTER THE ARMED CONFLICT

There have been very few (if any) services or awareness-raising efforts to address the social consequences of sexual violence within the family or community. This is extremely important, not only for survivors, but for the well-being of the whole family and community. This issue is addressed in greater detail under reparations.

## 5.7. ECONOMIC WELL-BEING OF SURVIVORS OF SEXUAL VIOLENCE AFTER THE ARMED CONFLICT

Immediately after the armed conflict, many women returned to find their homes burned and their sources of livelihoods destroyed. As well, the loss of their husbands and brothers had major psychological and economic consequences on their ability to sustain their families. Also during this period, “the opportunities for participation [of women, in particular those who had suffered sexual violence] in the economy were limited, and the overall percentage of unemployed women was about 58%, nearly double that of employed women (approximately 31 per cent). Many women thought [erroneously] that the end of the armed conflict would signal the advent of better and more prosperous times for them.”<sup>125</sup>

Immediately after the end of the armed conflict, many women, including survivors of sexual violence, lived in very dire economic circumstances. Women whose husbands abandoned them when they learned of their experience of sexual violence and/or women whose husbands had been killed during the armed conflict suffered immensely in economic terms. Women in villages, as well as in the city of Gjakovë/Đakovica, for example, were forced to live, often with their children in tow, in tents (provided by international aid agencies) in the areas where their homes used to stand. Some women from villages lived in tents for periods of up to six months, after which they began to rebuild their homes or to live with other family members. Other women lived in burned-out homes (their own and those

<sup>125</sup> UNFPA. Gender-Based Violence in Kosovo: A Case Study, 2005.

of others) and, for example, used blankets to cover windows. Finally some women lived in their own homes, which were still standing because Serb forces had used them to launch operations during the armed conflict. One woman recounts, "Every house in the village was burned, except for mine, which Serb [forces] had used. I had to spend one month cleaning it [simply to make it liveable]."

During this time, many women and children experienced significant hunger and difficulties in supporting themselves. Serb forces had destroyed their livelihoods by stealing their valuables (jewellery and money), killing livestock, burning storage facilities for those livestock, and often poisoning the water supply (including with dead bodies). Upon their return, some women recount having received food aid from international aid agencies for a period of two to three years after the armed conflict.

Over time, some survivors were able to rebuild their homes with the help of family members in and out of Kosovo. One survivor recounts how "adult children living abroad provided financial support so that they could rebuild homes, feed younger children, buy medications, and visit doctors." Some still continue to live today in dire circumstances, with their whole family living in one room of another family member's home, or living in transitional housing.

Since the period immediately following the end of the armed conflict, very few survivors interviewed indicated that they had managed to engage in any sort of income-generating activities to enable them to live above the poverty line. Many survivors have engaged in agricultural production but it appears only to suffice for their household's own consumption. One woman explains how "we make cheese and yoghurt, but we do not have enough to sell because we do not have enough cows. Even if we were to sell the milk from cows, we would not earn much (€0.20/litre)." As well, very few survivors interviewed have gained access to paid employment. Some general reasons for survivors' low level of access to income-generating opportunities are the following:

1. Survivors have PTSD and other psychological disorders that have made it difficult for them to engage in income-generating activities;
2. Survivors are unable to work due to physical disabilities resulting from physical abuse suffered during the armed conflict;
3. Women living in rural areas (including survivors of sexual violence) have not been able to secure higher levels of education and training, and to gain access to social networks (social capital) that would facilitate paid employment;
4. Taboos that limit the engagement of women (in particular rural survivors of sexual violence) in any form of productive activity that takes them outside the immediate environs of the village. For example, participants in the focus groups who have engaged in agricultural production beyond that necessary for basic household consumption, or who have taken on paid employment, have been accused of infidelity/seeking a boyfriend to replace a deceased husband;

5. In the rare case that a survivor has found paid employment, she has often suffered discrimination and abuse once her employer became aware that she had experienced sexual violence. Medica Kosova staff members indicate, for example, that employers have humiliated their employees once they found out that they were survivors of sexual violence;
6. Survivors (and rural women in general) lack land-tenure rights and access to productive inputs to expand agricultural production beyond that for meeting household needs. Women's property rights are crucial for rural women heads of households, in particular survivors of sexual violence, who often depend on agriculture for their livelihoods. In rural areas, property is often registered in the name of a male family member. When he dies, the property is rarely re-registered in the woman's name. It typically remains in the husband's name or is transferred to another male family member. Many women are unaware of their legal rights to inherit property, as defined in the Kosovo Law on Inheritance.

In the rare case that a woman is aware of this right, she must summon the courage to lay claim to the land in court with all of her family members present. This is especially challenging because family members often put pressure on women not to file such claims. And it is seldom within women's interests to strain relations with her family on whom she often depends financially. The prohibitive financial costs associated with registering property also serve as a barrier. A woman explained to the Kosovo Stability Initiative: "Last year we transferred the property to my family's name. It cost us around €900 to do so. We had to transfer the property from several generations ago to our name and that took a lot of money and time. The costs for the documents were quite high since we needed to pay a lawyer, the court and the fees for all of the supporting documents. Women heads of households need to have their property in their own name [...] in order to have a clear future."

Undefined property rights affect multiple areas of women's lives, including access to farmland and control over the family's financial resources. Women who might otherwise take out loans to grow their businesses cannot do so because they do not possess immovable collateral. Considering these issues, property rights may be a crucial area for the AGE in drafting the Strategy on the Economic Empowerment of Women, as per the European Platform against Poverty and Social Exclusion. At the same time, the municipality in close collaboration with the Cadastral Office can offer subsidies to women registering their property in their own names. Women's NGOs also can continue to raise awareness about women's property rights. More information should be made available to women regarding the free legal aid available via Legal Aid Offices.<sup>126</sup>

It is worth noting that Medica Kosova has provided some legal aid and representation to enable war-traumatized women, including survivors of sexual violence, to address legal issues with respect to inheritance, property rights, and the declaration of missing husbands to qualify for compensation under the 2011 Law on the Status and the Rights of the Martyrs. Medica Kosova also advocated for consideration of survivors of sexual violence in the draft of the aforementioned law.

<sup>126</sup> The majority of the text in this section derives from the following document: IKS (Kosovo Stability Initiative). Policy Paper - En Route to the EU: Area-Based Development Opportunities, 8 April 2011.

As well, in 2008, Medica Kosova began to use the psychosocial counselling groups as a basis for launch of income generation and vocational training projects. Through these initiatives, survivors and other war-traumatized women in the villages in the Gjakovë/Đakovica and Deçan/ Dečani regions received training and began to produce honey, collect milk, and make cheese depending on which productive technology and training they had received. For example, women who elected to concentrate on honey production received bees and honey production technology.

The newly formed Medica Gjakova also supported the Farmer's Cooperative (Kooperativa Bujqësore Gratë Fermere Duart e Dardanës Gjakovë), to begin functioning in October 2012. The cooperative includes war-traumatized and other women from 13 villages. Its members produce dairy, agricultural, and honey products, as well as traditional pastries. They are paid for their products as soon as they are collected or dropped off. These products are then sold at the Cooperative Store in Gjakovë/Đakovica town (near the bus station). The Cooperative Store has two managers, and also has a monthly meeting of its board of directors. The board includes the director, the two store managers, and a representative from each village. The cooperative's manager cites that because of the economic crisis, many members of the population are not willing to pay high prices for the products that they are selling. This limits profits and business growth. The manager also highlights that the store requires donor support (in particular, marketing assistance) for an additional four months to enable it to get completely off the ground.

Besides this initiative, there are few other economic reintegration projects to target survivors of sexual violence or other war-traumatized women. Within this context, survivors have had to depend largely on pensions and financial assistance and/or remittances from family living abroad. Some survivors receive pensions as a result of the death of their husbands through reparations schemes specified in the Law on the Status and the Rights of the Martyrs.

Other survivors receive social assistance because they meet the criteria established under the 2003 Law on the Social Assistance Scheme in Kosovo, as amended in 2012.<sup>127</sup> Neither the pension, nor the social assistance, is sufficient to meet their needs and those of their families. Of greater significance is that no survivor is entitled to receive any compensation based on her status as a survivor of conflict-related sexual violence.

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<sup>127</sup> Law No. 2003/15 on Social Assistance Scheme in Kosovo, 11 July 2003 ; Official Gazette of the Republic of Kosovo. Law No. 04/L.096 on Amending and Supplementing the Law No. 2003/15 on Social Assistance Scheme in Kosovo, No. 15, 13 June 2012

## 6. REPARATIONS FOR SURVIVORS OF SEXUAL VIOLENCE

The first and most important question is whether survivors of sexual violence recognize that they are entitled to reparations for the crimes of sexual violence that they experienced. Regardless of whether they are able to talk openly about the violence that they experienced in individual or group settings, survivors of violence do believe that they are entitled to reparations of some kind. Some indications include the following statements from participants in the focus-group discussions:

- “We have contributed to Kosovo. I have contributed part of my body.”
- “I am a key pillar of my family and the state.”
- “We saved our houses and families with our bodies.”
- “During the war, we saw ourselves as warriors. Now we are victims of the state because we lack support from the state.”
- “I need compensation for my spirit. I want financial resources. If I have no money, I have no life.”
- “I should receive pension in my name, not in my husband’s name.”
- “We should be released from payment [for health services], not because we lost our husbands, but because of the crimes we experienced. We all experienced crimes.”

The next important question is what types of reparations would provide redress for those crimes or, as one survivor so eloquently puts it, “heal their spirits.” Using the categories of reparations presented in Table 1 (Section 3.2) as a base, the discussion below outlines the current status of reparations, and what survivors who participated in the focus groups have identified as essential to provide them with redress for the crimes that they have experienced.

### 6.1. REHABILITATION

The survivors of sexual violence who participated in the focus groups were unanimous in their demand for the provision of medical and psychological care for their unmet needs in this area. Local NGOs (with local and international donor support) have been largely footing the cost of the provision of these services since the end of the armed conflict, in particular for psychosocial support. Any reparations scheme must consider how to ensure that survivors have access to quality, survivor-centered rehabilitative health services. As such, reparations efforts to include survivors in the Law on the Status and the Rights of the Martyrs must focus on the development of local and regional SOPs for sexual violence (including appropriate training on survivor-centred care for service providers),<sup>128</sup> and budget for free supplies, exams, and medications for survivors. In the short term, it is also essential

<sup>128</sup> It is recommended to establish linkages between forthcoming SOPs for Sexual Violence with the existing SOPs for the Implementation of the Kosovo Programme Against Domestic Violence and Action (2011-2014).

to scale up existing, successful ad-hoc arrangements to all NGO service providers – such as the one between the Ministry of Health and the KRCT – to provide the essential list of medicines to benefit survivors of sexual violence. Additional institutional arrangements are also necessary to cover the costs of medications not on the government’s list of essential medications.

With respect to psychosocial support, the research data indicates that it is unlikely that the mental-health system will be able to adjust in the near future to provide the necessary support to survivors even if changes in the law so dictate. This is due to the fact that the mental-health system has largely been unable to do so for other categories of survivors of conflict-related violence in the 13 years since the armed conflict ended. As such, it is recommended that the Ministry of Health, municipalities and international organizations provide support for NGOs to expand existing psychosocial support that they are providing to survivors. One promising initiative in this area is the current Kosovo authorities’ initiative to certify all organizations providing psychosocial support under the Family Law, which will then enable these organizations dealing with trafficking, domestic violence, and survivors of conflict-related sexual violence to request financial support from the Kosovo authorities. Within this context, it is also advisable to expand the network of qualified NGOs providing quality psychosocial support to survivors of sexual violence so that there is greater regional coverage in this area. As well, standardization of the treatment protocol among the existing, and new service providers operating in this area is also necessary.

## 6.2. RESTITUTION AND COMPENSATION

The goal of compensation is to provide redress for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human-rights law and serious violations of international humanitarian law.

Survivors were largely unanimous in their conviction that they should receive individual-level monetary compensation in the form of a monthly payment in their names, as redress for the violations that they experienced. When asked whether they would prefer a “one-off” compensation payment to a monthly payment, one survivor indicates that with a one-off payment, there would be the risk “that the family would take the money.” They indicated that this would be less likely with a monthly payment. Psychosocial support for survivors and awareness-raising among men and family members, as well as the population at-large, would also go a long way to ensuring that survivors maintain control of these funds. This finding is in line with international findings on the most effective methods for distribution of compensation.<sup>129</sup>

Some survivors also indicated that access to productive inputs, training, and employment would also compensate them for the material damages and loss of earnings, including the loss of earnings potential, as well as the moral damage that they suffered. According to one survivor, “...it is different to earn five euros for oneself than to be given 500 euros.” They highlight demands for agricultural inputs (tools, livestock, and construction materials) and business development services (to learn how to analyse market trends, which products to market, and how to market them).

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<sup>129</sup> OHCHR. Rule-of-Law Tools for Post-Conflict States: Reparations Programmes, 2008.

There are many possibilities in this area, which include potential collaboration between the Kosovo authorities (Ministry of Labor and Social Welfare), the private sector, and the UN. Existing initiatives coordinated by Medica Kosova and Medica Gjakova (including the Women Farmer's Cooperative *Duart e Dardanës*) to provide agricultural inputs to survivors also would benefit from additional support. As well, the United Nations Development Programme (UNDP) and Regional Employment Bureaus could scale up efforts to facilitate wage employment of survivors of domestic violence. This would clearly be just a beginning, but it would serve to inform more precise efforts in this area once the legislation will be in place. Increased support for women's right to gain access to land tenure would be extremely beneficial. Finally, legislation to decrease the taxes for companies that employ women would complement the aforementioned initiatives.

Not all survivors, however, prefer work to a monthly payment. This appears to vary according to the survivor's level of physical and psychological disability (resulting from the violence) or age, and the demands on survivors to take care of other family members (such as disabled family members). This also depends on the socio-cultural norms with respect to women engaging in productive activities, which appear to vary by village/community, and even by family.

Survivors were also unanimous in their demand for support to pay for the education of their children. Many Kosovo people lack the means to pay for the education of their children. The request for this type of support, however, should not be misconstrued as a demand for welfare benefits. Survivors' demand for free education of their children is a measure to compensate them for their personal loss of income and productive capacity to cover these costs themselves, and also as a measure to restore their dignity within the context of the family. Though survivors did not mention it expressly, it is also clear that survivors of sexual violence, as well as other conflict-traumatized women, have missed out on opportunities to obtain formal education.<sup>130</sup> They also appear to have missed opportunities to participate in more recent adult education schemes.

Some survivors have also indicated that they need some form of compensation to enable them to have more dignified places to live. As indicated previously, some survivors are living with their entire families all together in one room, and others are still living in transitional housing, which in other contexts would be used only as temporary housing for internally displaced persons.

Finally, survivors have significant health-care needs and have largely fronted the burden of the costs for medications, laboratory exams, and medical supplies by themselves. Possible measures might include a state-run fund to which different institutions, including international humanitarian organizations, could contribute to ensure that survivors have access to the medical care that they need. As well, arrangements between the IMF and World Bank could be explored to contribute to this fund.

<sup>130</sup> Ministry of Education, Science and Technology (Kosovo). Kosovo Education Strategic Plan: 2011-2016, 2011.

## Do No Harm

One key question in the context of compensation for crimes of conflict-related sexual violence in Kosovo is how to administer benefits in a way that would minimize the possibility that survivors are identified by the community-at-large. Though the principle of do-no-harm is applicable to all forms of reparations, survivors who participated in the focus groups expressed the greatest concern with the possible harm related to the administration of compensation and rehabilitative services. As a general principle, it is therefore essential to ensure that compensation and rehabilitation programmes are accessible to all survivors. One specific way to do so is to ensure that women's needs and concerns are taken into account in procedural as well as substantive issues (physical location, protection of anonymity, time frame, etc.).

It is also important to clarify that survivors vary significantly in their preparedness/willingness to be certified to receive such forms of reparations. Some feel prepared, yet others do not. One survivor explains, "I would be [too] ashamed to be certified as a survivor [of sexual violence]. The community does not support me. The community gossips." Another survivor from the Prishtinë/Priština region indicates, "Everyone knows the social assistance criteria in Kosovo. Everyone would want to know why we are receiving a pension [if we were certified to do so]. This would expose me."

High levels of stigmatisation and shame surrounding sexual violence are stronger than ever within the family, community, village, and other levels of Kosovo society. Even if a women's husband knows, for example, that she experienced sexual violence, other family members may not know. Survivors uniformly state that their mothers-in-law and husbands would likely discriminate against them if they knew what took place. Unmarried women and widowed women have been, and would be further stigmatized as well. The implications of this are that measures need to be in place to ensure a delicate balance between providing redress and avoiding exposing survivors to embarrassment.

Another key finding is that survivors prefer that any new or amended legislation focus primarily on the psychological suffering that they have experienced. As one survivor from the Prishtinë/Priština region specifies, "the Law on the Status and the Rights of the Martyrs, is only for those who are physically wounded." This highlights that the existing Law largely addresses physical damage and not psychological damage. Exceptions include missing civilian persons and civilian hostages of war. Any proposed legislation focused on survivors of sexual violence should not focus on the percentage of physical disability, but rather the psychological damage to survivors. This is because the psychological consequences of the violence are likely the most long-lasting. As well, at this point, it would be nearly impossible to obtain physical documentation of sexual violence, even if there are ongoing physical consequences of that violence.

## How to Identify Survivors in Proposed Legislation

There is a high level of diversity of opinion regarding how survivors of sexual violence would like to be recognized in any forthcoming legislation to compensate them for moral, physical, economic, social, and psychological damages. Some would like to be known as “survivors of war”. Others would like to be known as “invalids.” As one survivor indicates, “we want to be called invalids, because this is what we really are.” The preference for the term “survivor of war” signals that some survivors are aware of, and willing to be recognized for, the enormous violation of their human rights that took place during the armed conflict. In contrast, some survivors prefer the term “invalid,” thus indicating a preference to be incorporated into an existing category in the Law on the Status and the Rights of the Martyrs, which would thus provide them with a greater level of anonymity.

## Amend the Law on the Status and the Rights of the Martyrs, Invalids, Veterans, Members of the KLA, Civilian Victims of War and their Families or Propose New Legislation?

One key question is what would be the most effective vehicle to legislate reparations for survivors of sexual violence in Kosovo? More specifically, would it be more efficacious to amend the existing law or to enact a new law solely for survivors? There are varied opinions on this issue. Some survivors indicated that, “If there is a separate law, we would be certified separately and identified separately. We do not want this because then we will be labelled as rape survivors.”<sup>131</sup> Some policymakers argue that a new law would be easier to pass than an amendment to the existing aforementioned law. However, since the goal of compensation should be first and foremost to “do no harm,” it is necessary to protect survivors from further harm. This principle should therefore guide discussions on this issue. As one survivor states very succinctly, “If there is any element to differentiate us [through a new law, for example], it will create suffering and we have suffered enough already. We were mistreated during the war, and neglected after the war.”

## How to Certify and Administer Reparations?

Another key question is how to certify and administer compensation in a context of shame and secrecy with respect to sexual violence, once legislation has been passed. All survivors in the focus groups uniformly indicated that they would prefer to be certified as survivors of sexual violence by NGO psychologists. It is recommended here for NGO psychologists to provide a psychological diagnosis and a certificate that sexual violence took place. The psychological documentation, as well as the certificate and any other available medical documentation, would then be submitted to a small mixed medical commission of Kosovo authorities, private sector, and NGO experts (including a psychologist) to render an official decision on behalf of the Kosovo authorities. If the medical commission renders a favourable decision, then survivors would become entitled to receive compensation in the form of monthly payments, rehabilitative services, reduced taxes, and free education for their children. Given that these measures are so late in coming, it is recommended that there be no time limit on the reporting period of sexual violence.

<sup>131</sup> Focus Group with Survivors, October 2012.

The proposed model for Kosovo differs from the model employed in FBiH in several regards: In FBiH, the NGO that certifies survivors (Women Victim of War Association) does not have any trained psychologists or counsellors on staff. As well, the NGO does not provide a medical diagnosis. Rather, survivors must obtain a medical diagnosis from other state, private or NGO medical-service providers that have treated them. Lastly, in FBiH, all civilian victims of war (including survivors) must have gathered or obtained medical documentation before the end of 1997 (approximately two years after the end of the Bosnian War).<sup>132</sup> This timeframe for medical documentation excludes a large portion of the eligible population of survivors of sexual violence in FBiH, and would do the same in Kosovo.

As well, as noted in Section 5.4 the provision of psychosocial support and counselling is necessary both for survivors and their families (if survivors agree). It would enable survivors to feel entitled to compensation and to feel prepared to address any possible further stigmatisation that would take place as a result of their identification by community members. It is thus recommended to make available psychosocial support for a minimum of six months before, during and after the process of certification to receive compensation and access to rehabilitative services. In particular, psychosocial support will enable survivors (and their families with their approval) to provide an unfragmented story of what happened in front of whichever governmental mechanism is ultimately established to render an official decision regarding survivor certification to receive compensation.<sup>133</sup>

Taking a lesson from FBiH, NGO psychologists and counsellors should also be trained using a training curriculum specifically designed for this purpose. As well, there should be at least one NGO in each region to provide the psychosocial support and do the certification. According to Naime Sherifi, the director of the Centre for the Protection of Women and Children and the National Shelter Coalition, “to identify and treat survivors, one can use existing organizations that are already providing psychosocial support and provide additional training to them for this. There is no one institution that is capable of providing support for all of Kosovo. One should use the women’s shelters as a resource because they have psychosocial capacity.” She further highlights that “the Kosova Women’s Network can help to identify organizations, which might include: Medica Kosova in Gjakovë/Đakovica, Medica Gjakova in Gjakovë/Đakovica, the KRCT in Prishtinë/Priština, the Centre for Protection of Women and Children in the Prishtinë/Priština region, the Women’s Wellness Centre in Pejë/Peć, the Safe House in Gjakovë/Đakovica, and the Centre for the Protection and Rehabilitation of Women and Children, operated by NGO Liria in Gjiljan.” Finally, it is necessary to develop an ethical code of conduct for all service providers, and a complaint mechanism for survivors if ethical issues arise.

<sup>132</sup> TRIAL (Swiss Association Against Impunity), Association of Women-Victims of War, Medica Zenica et al. Written Information for the Adoption of the List of Issues by the Committee on the Elimination of Discrimination of Violence against Women with regard to Bosnia and Herzegovina’s Combined Fourth and Fifth Periodic Reports. (CEDAW/C/BIH/4-5), September 2012.

<sup>133</sup> Medica Gjakova. Interview, 21 November 2012. Note: Fragmentation is a symptom of trauma.

## Institutional Mechanisms Charged with Certification for Compensation

It is also recommended that the official commission ultimately charged with medically certifying survivors first and foremost includes NGO service providers selected in a competitive way and based on predetermined criteria. Second, the mechanism should include professionals trained in counselling of survivors of sexual violence. As well, it is advisable to ensure consistent staffing of the commission to avoid some of the challenges documented in FBiH (see Section 3.4). The commission should also consider additional complementary sources of documentation in the certification process, including documentation on cases of sexual violence and more general data on the attacks on villages from the IRWC, the Council for Human Rights and Freedoms, and the Humanitarian Law Centre (HLC).

The survivors can personally apply for certification or they can authorize NGOs to submit the necessary documentation on their behalf, thus enabling individual survivors to avoid having to expose themselves personally to institutions (except to the NGOs). Such a procedure has a point of departure in the rights of the survivors and their welfare. Furthermore, the NGOs could contribute to reducing the stigma and shame by also taking part in raising public awareness on survivors and their rights to reparations.

## Timeframe for Certification of Survivors

It is recommended to develop a system of rolling certifications for survivors of sexual violence to apply for and become certified to receive compensation. Permitting this type of flexibility, within limits, is in line with international best practices in this area. This type of system will allow survivors who would be immediately willing to become certified to do so. It would provide other more hesitant survivors with the time and counselling that they need to feel comfortable to become certified and to address any stigma that might accompany the certification process.

There are some concerns that this would make the process for budgeting for compensation rather challenging. It is important to note through, that only a very small portion of the total (unknown) number of survivors would actually feel comfortable coming forward to become certified. The evidence from FBiH confirms this point. Out of the thousands of women that experienced sexual violence over a period of four years, only about 900 women have actually been certified to receive compensation. In this light, it is not likely that thousands of women will come forward in Kosovo to claim their right to compensation.

<sup>134</sup> It is worth noting that the sharing of data with the prosecution and other relevant institutions [of importance for ensuring justice for survivors] forms part of the mandate of the Institute for the Research of War Crimes.

<sup>135</sup> Correa, Cristián. *Reparations Programs for Mass Violations of Human Rights: Lessons from Experiences in Argentina, Chile and Peru*, in: Félix Reátegui (ed.), *Transitional Justice: Handbook for Latin America*, Brasília – Brazilian Amnesty Commission, Ministry of Justice / New York – International Center for Transitional Justice, 2011, 409–441.

<sup>136</sup> Estimates vary depending of the sources. See for example: United Nations Commission on Human Rights. *Report on the situation of human rights in the territory of the former Yugoslavia* submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to Commission resolution 1992/S-1/1 of 14 August 1992 [E/CN.4/1993/50 – 10 February 1993]; *Final Report of the Commission of Experts established pursuant to Security Council Resolution 780 (1992) [S/1994/674, Annex – 27 May 1994]*.

As well, very few women will likely feel comfortable to come forward during the first year of any such programme. Putting a timeframe on claiming compensation would exclude large numbers of survivors. And this clearly would defeat the purpose of any current and future efforts to legislate the provision of compensation. Therefore budgeting efforts should use the existing number of identified and confirmed survivors as a starting point and then adjust those numbers upward on an annual basis.

With respect to the “benefits cards” (to entitle survivors to monthly payments, “free” health care, and free education for their children), focus-group participants were largely unanimous in their view that benefits cards should in no way indicate that they were survivors of sexual violence. Once certified, one possibility to maintain survivor confidentiality in the administration of reparations would be to include the survivors certified to receive reparations in the current roster of “civilian victims of war” or “civilian hostage of war” (where the survivor was held in captivity during the sexual violence.) In addition, their “benefits” cards, as well as any data associated with the administration of compensation, should ensure the anonymity and maintain the confidentiality of survivors’ identities.

The arrangements for the administration of compensation, in particular to spell out the aforementioned details, should be established under SOPs. These SOPs should be incorporated to the sub-law of any legislation to provide reparations for survivors of sexual violence. Though it is necessary to wait until the legislation is passed to formalize the SOPs, organizations can start now in an informal manner to prepare the SOPs so that they ready to include them in the sub-law whenever the draft text of the legislation for survivors is approved.

The development of SOPs for reparations for survivors of sexual violence is essential for the administration of reparations. As in the FBiH, they will improve the delivery of support services to survivors and witnesses testifying in courts dealing with war crimes linking all relevant service providers into a single chain of support. Besides coordination and collaboration, including information sharing and referrals, the key stakeholders administering reparations would receive training on sexual violence trauma to make them more capable to deal with survivors in a sensitive way.

More specifically, the SOPs would clarify (i) who will do what and where (including the identification of NGO service providers in each region); (ii) who is qualified to help survivors and what type of support should be provided; (iii) lay out a common protocol and standards for all organizations working with survivors (including training of such organizations; and (iv) specify a code of ethics and complaint mechanism for users of those services, and coordinated efforts to make users aware of the mechanism. It goes without saying that key institutions, in particular the Ministry of Labor and Social Welfare (MLSW) and the Ministry of Health, should be at the forefront of this process, especially with respect to the evidentiary standards for certification.

## 6.3. SATISFACTION

In the context of Kosovo, survivors participating in focus groups identified the following measures of satisfaction as their priorities:

- An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;
- Judicial and administrative sanctions against persons liable for the violations.

### 6.3.1. AN OFFICIAL PUBLIC DECLARATION OR A JUDICIAL DECISION RESTORING THE DIGNITY, THE REPUTATION AND THE RIGHTS OF THE VICTIMS AND OF PERSONS CLOSELY CONNECTED WITH THE VICTIM

With the point of view of survivors as a departure point, it is clear that an official declaration by key authorities, in particular the President, is necessary to provide redress for survivors of sexual violence. This type of redress would be a collective and symbolic form of recognition and cost very little for the Kosovo authorities and other key leaders to undertake. As one survivor states succinctly, "...The Prime Minister, Members of Parliament, President (because she is a woman) and other public authorities should recognize that sexual violence took place, and try to destigmatise rape." Thus far, no such public declaration has been made.

Within the context of the ongoing technical dialogue between Belgrade and Prishtinë/Priština, there are also demands from social movements for a public apology by the Government of Serbia for the human-rights violations carried out against the people of Kosovo during the 1990s, including for the use of rape as a weapon of war. Again, thus far, no such public declaration has been made.

Beyond public declarations, there is also clearly a need for a coordinated and comprehensive general awareness-raising campaign to destigmatise sexual violence at all levels of Kosovo society. Survivors have indicated that the starting point for such a campaign should be the family. As one survivor in Gjakovë/Đakovica recommends, "It is necessary to destigmatise [sexual violence] for men, and for women in the family, in particular their mothers-in-law. A potential mother-in-law would not accept the son's choice [to marry] a raped woman. We need awareness-raising within the family."

The purpose of awareness-raising is to destigmatise sexual violence as an end in and of itself. It is also, like psychosocial support, extremely important for survivors of sexual violence to be able to take advantage of any possible compensation measures and to be able to obtain legal redress, without being retraumatized by stigma from their families, communities, and Kosovo institutions. Survivors indicate that awareness-raising is also necessary to diminish their shame, and reinforce that they were victims, not perpetrators, of a crime. More specifically, the purpose of such awareness-raising is to ensure that the survivors, their families and communities and the general public know that sexual violence is a serious violation of human dignity, human rights and, in the context of armed conflict and humanitarian law, can constitute a war crime, crime against humanity and an act of genocide. This knowledge is essential for disputing the traditional notion that sexual violence is a dishonour for the survivors. It is also crucial for supporting the process of building public support in favour of their legal

recognition as civilian victims of war entitled to assistance from public institutions. Moreover, only by having survivors and other witnesses testifying, war-crime trials can contribute to the establishment of the truth about past atrocities, provide redress for survivors, and promote reconciliation. Therefore, raising public awareness and providing comprehensive support is essential for encouraging survivors to share their experiences, which in turn will determine to a large degree the willingness and ability of survivors and witnesses to take the next step and testify in court upon which the success rate of sexual violence war-crimes investigation and prosecution depends.

To date, there are some efforts underway by the KRCT and the Minister of European Integration, Medica Kosova, KWN, and UN Women. These efforts are just the tip of the iceberg of what needs to be a broad and far-reaching campaign at the national and local levels to destigmatise sexual violence. At the local level, it would be advisable to include key community stakeholders who have indicated that they are willing to engage in this area with both men and women. For example, in Gjakovë/Đakovica, the Shejh Ruzhdi Shehu, the religious leader of the Tekke (a building designed specifically for gatherings of the Muslim Sufi community in Gjakovë/Đakovica) has indicated that he would be willing to take the lead in awareness-raising among men and women that form part of his Tekke. As well, Mr. Afrim Caka, a former political prisoner, member of the Association of Former Political Prisoners of Kosovo, and author of a comprehensive book on war crimes in Gjakovë/Đakovica, has also signaled his willingness to participate in awareness-raising. These are only two key actors among many, that could be engaged in awareness-raising efforts.

## 6.3.2. JUDICIAL AND ADMINISTRATIVE SANCTIONS AGAINST PERSONS LIABLE FOR THE VIOLATIONS: ACCESS TO LEGAL REDRESS – INTERNATIONAL INVESTIGATION AND PROSECUTION OF CASES OF SEXUAL VIOLENCE

Section 4 provided a theoretical description of the international and Kosovo legal frameworks applied to cases of conflict-related sexual violence in Kosovo. This section provides an overview of the key actors/tribunals and how, practically speaking, international legal norms have been applied in the investigation and prosecution of cases of sexual violence. The criminal investigation and prosecution of crimes committed in Kosovo under international law have taken place at several tribunals, including the ICTY, the Stockholm District Court (under universal jurisdiction), and Serbia's Special War Crimes Chamber in Belgrade.

### The International Criminal Tribunal for the Former Yugoslavia (ICTY)

The ICTY has jurisdiction to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia, including Kosovo, since 1991. The tribunal has the power to prosecute persons responsible for committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, violations of the laws or customs of war, genocide, and crimes against humanity.

The ICTY has raised five indictments to date with respect to war crimes and crimes against humanity in Kosovo. By the time the tribunal completes its pending cases, it will have tried 11 defendants accused of crimes committed in Kosovo. While sexual violence was included in various indictments, not all defendants were eventually found guilty of such crimes. There are currently two pending cases where the ICTY has specifically addressed sexual violence:

1. **Šainović et al. (IT-05-87):** The ICTY convicted three leaders, Former Deputy Prime Minister of the Federal Republic of Yugoslavia Nikola Šainović, Former Commander of the Third Army of the VJ Nebojša Pavković and Former Head of the Serbian Ministry of Internal Affairs (MUP) Staff for Kosovo Sreten Lukić for crimes against humanity, and sentenced each to 22 years' imprisonment.<sup>137</sup> The trial chamber classified the sexual assault as a form of persecution and as a crime against humanity. The court considered that the three aforementioned officials had reason to foresee and, therefore, prevent such sexual assaults. In the same case, Chief of the General Staff of the Yugoslav Army (VJ) Dragoljub Ojdanić and Former Chief of Staff of the Prishtinë/Priština Corps of the VJ, then Former Commander of the Prishtinë/Priština Corps, Vladimir Lazarević, were sentenced to 15 years' imprisonment. Milan Milutinović, the former President of Serbia and a member of the Supreme Defence Council of the Federal Republic of Yugoslavia (Serbia and Montenegro) was found not guilty on all charges, and acquitted. The case is at the appellate procedure for all, except Milutinović.
2. **Đorđević (IT-05-87/1-T):** Assistant Minister of the Serbian Ministry of Internal Affairs (MUP) and Chief of the Public Security Department (RJB) of the MUP; responsible for all units and personnel of the RJB in Serbia, including Kosovo Vlastimir Đorđević was found guilty of on the basis of individual criminal responsibility (Article 7 (1) of the Statute of the Tribunal) of deportation (crimes against humanity, Article 5), other inhumane acts (forcible transfer), (crimes against humanity, Article 5), murder (crimes against humanity, Article 5), murder (violation of the laws or customs of war, Article 3), persecutions (crimes against humanity, Article 5) and sentenced to 27 years' imprisonment. Though sexual assault initially formed the basis of the indictment, it did not form the basis of Đorđević's conviction for crimes of persecution. Though the chamber found that incidents of sexual assault had been established, no evidence has been presented that the perpetrators (under Đorđević's authority) acted with intent to discriminate. Intent to discriminate is an essential element that must be proved. Therefore, the charge of persecution committed through sexual assault was not established, and did not form the basis of the conviction. This case is currently under appellate procedure.

<sup>137</sup> ICTY. Judgement Summary For Milutinović et al., 26 February 2009.

## Serbia's Special War Crimes Chamber at the Belgrade District Court and the Office of the War Crimes Prosecutor of the Republic of Serbia

Serbia's Special War Crimes Chamber has the exclusive responsibility for crimes against international law, as specified in the Law on Organization and Jurisdiction of Government Authorities in Prosecuting Perpetrators of War Crimes. This law was adopted in July 2003. Prosecutions opened in 2004 and, as of 10 February 2012, proceedings in some 26 war-crimes cases have been conducted, including cases related to Kosovo.

Specifically with regard to sexual violence, the special chamber sentenced nine members of the "Gnjilane Group" (who were members of the KLA) to a total of 101 years in prison on 1 January 2011 for war crimes against the civilian population in 1999 (after the end of the armed conflict). This included the repeated rape, inhumane treatment and violation of the bodily integrity of Kosovo Serbian and other non-Albanian women in Gjilan.<sup>138</sup>

On 7 December 2011, the Appeals Court in Belgrade quashed the aforementioned verdict and sent the case for retrial. A new trial began for this case in March 2011. On 19 September 2012, the court sentenced 11 of the defendants to a total of 116 years in prison for war crimes. The case was subsequently appealed and awaits final verdict.

## 6.3.3. REPARATIONS: LEGAL REDRESS – THE INVESTIGATION AND PROSECUTION OF SEXUAL VIOLENCE IN TRIBUNALS WITHIN KOSOVO

As of 1 January 2013, the seven Basic Courts (in Prishtinë/Priština, Gjilan/Gnjilane, Prizren, Gjakovë/Đakovica, Pejë/Peč, Ferizaj/Uroševac, and Mitrovicë/Mitrovica), one Court of Appeals (in Prishtinë/Priština), and one Supreme Court address crimes committed during and after the conflict.<sup>139</sup>

## Role of the United Nations Interim Administration Mission in Kosovo in Supporting the Investigation and Prosecution of Conflict-Related Sexual Violence

By way of UNSCR 1244 of 10 June 1999, the Security Council established the United Nations Interim Administration Mission in Kosovo (UNMIK), which had the task of administering the territory and population of Kosovo. According to the UNMIK Department of Justice, until April 2007, only 23 procedures for war crimes, genocide and crimes against humanity took place and numerous acquittals were pronounced due to lack of sufficient evidence or evidence obtained improperly.<sup>140</sup> In 2008, UNMIK was subject to a restructuring plan approved by the UN Security Council. In this process, UNMIK lost all its executive police and justice competencies.<sup>141</sup>

<sup>138</sup> Humanitarian Law Centre. Press Release: A Guilty Verdict for Members of the Gnjilane Group Charged with War Crimes Committed against Serbs and other Non-Albanians. January 2011.

<sup>139</sup> Official Gazette of the Republic of Kosovo. Law No. 3/L-199 on Courts, No. 79, 24 August 2010.

<sup>140</sup> IRIN. Justice for a Lawless World? Rights and reconciliation in a new era of international law, Part II, July 2006, p. 40.

<sup>141</sup> A brief summary of the change of the UNMIK configuration is available at: <http://www.un.org/en/peacekeeping/missions/unmik/background.shtml> (30 April 2013)

## Role of EULEX in Supporting the Investigation of Conflict-Related Sexual Violence

EULEX's mandate is to ensure that cases of war crimes and other serious crimes are properly investigated, prosecuted, adjudicated and enforced, according to the applicable law, including, where appropriate, by international investigators, prosecutors, and judges jointly with Kosovo investigators, prosecutors, and judges, or independently, and to take measures to ensure, 'as appropriate,' the creation of cooperation and coordination structures between police and prosecution authorities.

With respect to the investigation of conflict-related sexual violence cases, the EULEX WCIU is comprised of one chief, two international investigators, and nine national investigators from the KP. The two international investigators and five of the national investigators are women. Though all investigators are deemed competent to investigate war crimes cases, two female investigators have been assigned to investigate cases of conflict-related sexual violence. The unit does lack ethnic minorities; there is only one Turkish-speaking officer. Furthermore the nine-person Kosovo Police investigations team generally lacks resources; however, the recent assignment of a new vehicle to the unit will bolster its capacity. As well, the likely assignment of another vehicle will further enhance the logistical capacity of the unit.

The EULEX WICU was not able to provide figures on cases of sexual violence currently under investigation (for reasons of confidentiality). However, many national and international stakeholders have noted that during the last year the EULEX WCIU has increased its capacity and commitment to investigate cases of conflict-related sexual violence, despite a reduction in the number of its staff. This, coupled with support from NGOs working with survivors, has resulted in trust and access to witnesses, and perceivable changes in the willingness of survivors to come forward during the last year.

## Role of EULEX in Supporting the Investigation of Conflict-Related Sexual Violence

The Special Prosecution Office of Kosovo (SPRK) have exclusive competence in the investigation and prosecution, in accordance with the applicable law in force prior to the entry into force of the Kosovo Criminal Procedure Code all crimes listed in Articles 141-155 of the SFRY CC, also in the form of attempt, and of the various forms of collaboration to these crimes.

The SPRK counts with 20 special prosecutors, including 10 nationals and 10 internationals. The leadership of the SPRK notes that there should be a total of 30 special prosecutors (15 national and 15 international). Among the 20 prosecutors, only two full-time prosecutors are dedicated to war crimes. Currently the SPRK counts with only a few women prosecutors, due to the recent departure of an additional woman prosecutor. The SPRK notes, however, that female prosecutors are assigned as much as possible to cases of sexual violence. Though EULEX has expertise in the area of criminal proceedings, they may not necessarily have expertise in war crimes related to cases of sexual violence.

<sup>142</sup> Official Gazette of the Republic of Kosovo. Law No. 03/L-052 on the Special Prosecution Office of The Republic of Kosovo, No. 27, 3 June 2008

In terms of the challenges with respect to the prosecution of cases of sexual violence, the SPRK notes that, many victims are not willing to come forward. Why this is the case is not clear. Only the victims know the real reasons for this. It further notes that to prosecute the case, they “need the survivor’s participation.”

Out of 51 international judges, only four adjudicate in war-crimes trials. Since cases are allocated to judges serving in the district where the crime took place, there is little possibility to ensure that woman judges adjudicate in the cases of sexual violence.

On 17 April 2013, the Basic Court in Mitrovicë/Mitrovica, in a trial chamber composed of three EULEX judges has acquitted two K-Serbs of charges for war crimes against civilian population including rape committed during the armed conflict in April 1999. Both accused were found not guilty for charges of raping a K-Albanian woman in April 1999 (16 years old at the time of the crime). Presiding judge, during the announcement of the verdict, said that the trial chamber had found that the victim was abducted on 14 April 1999 from her home in the village Stanovc and was then sent to the village of Babin Most where she was raped, but that there were no evidence that this was done by the accused. This is the second case to be prosecuted in Kosovo related to sexual violence during the armed conflict. The first case was completed in 2002 at the Gjilan/Gnjilane District Court, and the accused was acquitted of all charges.

It is important to note that there is a challenge with respect to the prosecution of cases of conflict-related sexual violence in Kosovo when the perpetrator is currently residing in Serbia. This is because there is no mutual legal agreement Belgrade and Prishtinë/Pristina.

## Witness Protection

One of the challenges with respect to the willingness of survivors of sexual violence in Kosovo to submit to the investigations process may be the lack of adequate witness protection measures. EULEX, as well as survivors of sexual violence, have noted that there is a need for protection – both during the investigation and trial of cases. But what type of protection do they require? Moreover, survivors of sexual violence may require protection from perpetrators in case they live in or near the same communities as the perpetrator.

In theory, there are several measures in place to protect victims and witnesses testifying in war-crimes cases, including those where sexual violence forms the basis for the investigation and indictment of a crime. The KCPC provides for a number of witness-protection measures for ‘injured parties and witnesses’ including but not limited to omitting or expunging names, addresses, places of work, professions, etc.; non-disclosure of any identification records; testifying behind an opaque shield or through image or voice-altering devices, contemporaneous examination in another place communicated to the courtroom by means of closed-circuit television, or video-taped examination; assignment of a pseudonym; closed sessions to the public; orders to defence counsel not to disclose the identity of the aforementioned persons; temporary removal of the defendant from the courtroom, etc.

EULEX has its own Witness Security Programme, which operates in Kosovo and may relocate witnesses in third countries. A Witness Protection Committee is established within EULEX and it decides who will be declared 'a protected witness.'

In addition to the measures that EULEX has put in place, the Kosovo Assembly passed a Law on Witness Protection in July 2011, which established procedures for the protection of witnesses. The law came into force in September 2012. This law also established the Witness Protection Programme under the supervision of the Witness Protection Committee.

The Law on Witness Protection empowers a Witness Protection Committee (comprised of the Chief State Prosecutor, the Head of the Investigation Unit of the Kosovo Police, and the Director of the Witness Protection Directorate within the Kosovo Police) to decide on inclusion into the programme, the duration and the termination of the protection.

The Kosovo authorities have worked to develop sub-legal acts for the implementation of the Witness Protection Law.

### 6.3.4. TRUTH SEEKING

In the focus-group discussions, survivors of sexual violence did not highlight that the verification of facts and full public disclosure of the truth was essential for reparations. Nonetheless, there are some efforts underway in this area that are important to address. In particular, recent efforts by the IRWC merit discussion.

The IRWC was inaugurated on 11 June 2011. It is an official body mandated by the Ministry of Justice to "collect, process, classify and store cases of war crimes, crimes against humanity and values, protected by international law."<sup>143</sup> Though mandated by the Ministry of Justice, the IRWC is intended to carry out its function independently and with impartiality. The Institute is based at the Academy of Science and counts with six male staff and additional external experts to assist with conducting research. Several Institute staff members are former employees of the Council for Human Rights and Freedoms. In addition, the Institute has one person in each municipality who is authorized to gather information, in line with the institution's mandate. Within the context of the 2012 Global Open Day on Women, Peace and Security that took place on 12 September 2012, the KRCT has recommended two national women experts to bolster the capacity of the Institute to conduct research on sexual violence. The institute focuses on documenting crimes that took place during 1998/1999; however it does not exclude crimes that were committed before 1998. Specifically with respect to conflict-related sexual violence, the IRWC notes that there were cases beginning as early as 1992. Though numerous organizations have published data on the incidence of sexual violence, the institute highlights that those data cannot be verified. The IRWC therefore considers that it has the mandate to establish the true numbers of cases of conflict-related sexual violence. The mandate of the IRWC is therefore one of documentation, not of investigation of cases of conflict-related sexual violence. The mandate for investigation of such cases lies with the EULEX War Crimes Investigation Unit.

<sup>143</sup> KCPC, Chapter XIII

<sup>144</sup> KCPC, Chapter XIII, Article 222 (1).

<sup>145</sup> Official Gazette of the Republic of Kosovo. Law No.04/L-015 on Witness Protection, No. 13, 1 September 2011.

<sup>146</sup> Ministry of Justice (Kosovo) It is inaugurated the War Crimes Research Institute. 13 June 2011.

Thus far, the IRWC has identified the major sites where crimes of sexual violence has been committed, and also collected some sworn testimonies in cases of sexual violence. As well, it is currently seeking data from medical-services providers in Albania and in the FRY of Macedonia on abortions performed during the armed conflict, as a possible proxy indicator for the incidence of sexual violence. The institute has also requested data on the incidence of sexual violence from central and district prosecutors in Albania and the FYR of Macedonia, with no response received to date.

The institute highlights that “absolute figures [on rape] will never be possible. It is recognized that sexual violence is part of war, but the magnitude is the question.”<sup>147</sup> With respect to the burden of proof to establish definitively that sexual violence took place, the IRWC indicates that an individual statement is the most powerful, but that data from secondary sources – hospitals, neighbours, families with missing members – can also support the documentation process. As well, it will take data into account from other institutions but aim to verify these data. The institute clarifies that it has developed a specific programme to store data on sexual violence, and specific protocols to maintain the confidentiality of those data.

The IRWC has advocated with the Ministry of Justice to have a legislative framework for reparations for survivors of sexual violence but that “exact numbers are required because this has budget implications.”<sup>148</sup> It further recommends the provision of compensation (through pensions) to those who bring testimonies to the IRWC. It is important to address the potential moral hazard issues with respect to offering compensation to all those who bring testimonies – i.e. can testimonies be considered credible if they are motivated by an incentive that would guarantee them compensation?

It is also necessary to maintain the distinction between the mandate of the IRWC – to document what occurred during the armed conflict toward establishing official numbers of survivors of sexual violence – and that of other institutions focused on developing and implementing legislation on reparations for survivors of sexual violence. It is recommended that the two processes not be linked (although a minimum of coordination is necessary), and that NGO service providers be designated to certify that women are survivors of sexual violence, toward receiving compensation for the crimes that they experienced. This is essential first and foremost because the process of establishing accurate figures for the total number of survivors of sexual violence will take many years, while survivors need reparations today.

Kosovo authorities also established the Inter-Ministerial Working Group on Dealing with the Past and Reconciliation. It is functioning under the auspices of the Prime Minister’s Office to deal with gross human-rights violations and serious violations of international humanitarian law during the war and the transitional period.<sup>149</sup> The mandate of the working group covers truth-seeking, reparations, justice and institutional reform and is supposed to establish a comprehensive, inclusive and gender-sensitive approach for dealing with the past in Kosovo by means of adopting a Transitional Justice Strategy. It is essential that the Transitional Justice Strategy take into account the question of reparations for survivors of sexual violence

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<sup>147</sup> Interview with Mr. Pajazit Nushi, Institute for the Research of War Crimes, 16 October 2012.

<sup>148</sup> Ibid.

<sup>149</sup> Decision on the Establishment of Inter-Ministerial Working Group on Dealing with the Past and Reconciliation (WG DwPR), No. 03/77, 4 June 2012.

## Regional Commission Tasked with Establishing the Facts about All Victims of War Crimes and Other Serious Human Rights Violations Committed on the Territory of the Former Yugoslavia in the period from 1991–2001 (RECOM)

RECOM is a regional project of approximately 1,900 non-governmental organizations, associations of victims' families, victims, and youth organizations; renowned individuals from the region have gathered around this initiative. The purpose of RECOM is to assist governments in forming a regional commission to establish the truth about war crimes in the former Yugoslavia committed between 1991 and 2001. The proposed statute for the regional commission stipulates that the function of the commission would be to establish the facts related to serious violations of international humanitarian law and other gross violations of human rights, including rape and other forms of sexual abuse.<sup>150</sup> Beyond its mandate, RECOM has not taken any other initiatives to address conflict-related sexual violence. Currently RECOM is carrying out consultations with civil society about RECOM's mandate and character and working to develop a model structure for RECOM. It is campaigning to collect one million signatures supporting the establishment of RECOM and calling on national governments in the region to support the establishment of RECOM.<sup>151</sup> Within this context, RECOM has a unique opportunity to ensure that conflict-related sexual violence stays on the regional agenda.

### 6.4. ADVOCACY FOR REPARATIONS

One key question is where advocacy for reparations, and awareness-raising efforts currently stand. Since 2003, there have been efforts to advocate for reparations for survivors of sexual violence in the armed conflict in Kosovo. Such efforts have included advocacy for the inclusion of survivors in the Law on the Status and the Rights of the Martyrs. Highlights of recent advocacy or awareness-raising efforts include the following:

- On 8 March 2012 (International Women's Day), the KWN organized a demonstration calling upon the Kosovo authorities to acknowledge the crimes that were committed against women and to provide them with legal protection equivalent to that received by men who suffered war crimes.<sup>152</sup> On this day, KWN and Kvinna till Kvinna Foundation send a letter to the Head of EULEX commending EULEX for recent steps toward prosecuting the crime of rape committed against women during the armed conflict in Kosovo. It further encouraged EULEX to continue to treat cases of sexual violence and rape as serious crimes; prevent the retraumatization of survivors through a cautious and sensitive approach that considers the individual needs of women and ensures that they are provided with quality psychosocial support; and provide all available and necessary measures for witness protection.

<sup>150</sup> RECOM. Proposal of the Regional Commission for Establishing the Facts About War Crimes and Other Gross Violations of Human Rights Committed on the Territory of The Former Yugoslavia. 26 March 2011.

<sup>151</sup> Humanitarian Law Centre. RECOM Process: Results and Prospective, 08 July 2011.

<sup>152</sup> Kosova Women's Network. Forget Flowers: Women Call for Justice for War-Raped Women on 8 March. 2 March 2012.

- On 9 March 2012, the Commission on Human Rights, Gender and Missing Persons held a special session in Parliament on sexual violence against women during the armed conflict.
- In June 2012, the Minister of European Integration, Medica Kosova, KRCT, the Ombudsperson Institution in Kosovo, and survivors of sexual violence held a dialogue on conflict-related sexual violence.
- From 5-12 September 2012, in celebration of the Global Open Day on Women, Peace and Security, the UN hosted a series of roundtables and public events to highlight the situation of survivors of conflict-related sexual violence, in particular the issue of legal redress.

## 7. RECOMMENDATIONS

### 7.1. GENERAL RECOMMENDATIONS

#### To all stakeholders:

- a)** Ensure the centrality of survivors in the design and implementation of reparation programmes (e.g. through consultations and participation throughout the process);
- b)** Employ a “do-no-harm” approach to the design and implementation of all reparations measures;
- c)** Develop Kosovo SOPs for providing coordinated survivor-centred services to women and men who experienced sexual violence in the armed conflict. (Within this context, it is recommended to follow the model of the Federation of BiH to develop SOPs to address which organizations are responsible for providing services, standards for all organizations working with survivors, codes of conduct and a complaint mechanism for users of those services, and plans for coordinated awareness-raising efforts to make users aware of this mechanism);

#### To the Kosovo authorities:

- d)** Adopt and implement the Action Plan on UN Security Council Resolution 1325 which includes a section on sexual gender-based violence, and develop other relevant short-, medium- and long-term strategies to advance reparations for survivors of sexual violence;
- e)** Design and implement reparations measures for survivors of sexual violence with a primary focus on the multifaceted nature of the violations of rights that took place, rather than on the level of physical disability that resulted from that violation;
- f)** Amend the Law on the Status and the Rights of the Martyrs, Invalids, Veterans, Members of the Kosova Liberation Army, Civilian Victims of War and Their Families to recognize survivors of sexual violence as civilian victims of war, and consequently amend any relevant legislation;
- g)** Ensure that reparations measures are not limited to establishing the incidence of conflict-related sexual violence in Kosovo, but rather allow registered survivors to benefit from those reparations measures;
- h)** Provide reparations to survivors of sexual violence without discrimination, notably based on gender and ethnicity;

- i) Adopt a flexible and phased approach to reparations, including flexible procedures and evidentiary standards adapted to the specificities of sexual gender-based violence;
- j) Establish a special fund for reparations of survivors of sexual violence (including for rehabilitation, compensation, judicial redress, awareness-raising).

To the international community:

- k) Support the Kosovo authorities' efforts to design and implement reparation measures by providing financial and technical assistance, and ensuring compliance with international human-rights norms and standards, as well as good practices;
- l) Ensure that transitional justice processes and mechanisms with a gender perspective and victims-centred approach are integrated in European integration processes.

## 7.2. RECOMMENDATIONS ON RESTITUTION AND COMPENSATION

To the Kosovo authorities:

- a) Provide survivors with individual monthly compensation;
- b) Provide support as necessary to survivors of sexual violence by facilitating employment opportunities and enabling access to vocational training;
- c) Integrate survivors into the implementation of the Action Plan for the Economic Empowerment of Kosovo Women 2011-2013;
- d) Provide financial support for the education of children of survivors of sexual violence through scholarships, grants, etc.;
- e) Support as necessary the most vulnerable survivors to enjoy their right to adequate housing.

## 7.3. RECOMMENDATIONS ON THE ADMINISTRATION OF COMPENSATION

### To the Kosovo authorities:

- a)** Designate at least one NGO in each region through a competitive process and based on pre-determined criteria to provide psychosocial support for survivors;
- b)** Develop and implement a standardized training curriculum and codes of conduct for NGO service providers in this area and ensure that at least one designated NGO in each region provides psychosocial support;
- c)** Support NGOs to prepare survivors, notably through counselling, to facilitate the conditions for survivors of sexual gender-based violence to register for any forthcoming compensation;
- d)** With respect to the timeframe for certifying women, do rolling certifications over an extended period of time (possibly five years) bearing in mind the high level of stigma associated with sexual violence;
- e)** Include survivors into current rosters of civilian victims of war and ensure that their “benefits” cards, as well as any data associated with the administration of compensation, guarantee the anonymity, confidentiality and right to privacy of survivors;
- f)** Ensure that the commission ultimately charged with certifying survivors (comprised of notably Kosovo officials and NGO experts, including a psychologist) consider additional complementary sources of documentation in the certification process.

### To the designated NGOs:

- g)** Make available psychosocial support for at least six months to survivors before, during and after the certification process to determine whether they had experienced sexual violence;
- h)** Provide through their counsellors a psychological diagnosis and certify whether sexual violence occurred. The psychological documentation, as well as the certificate and any other existing medical documentation, would then be submitted to the commission to render an official decision on behalf of Kosovo authorities, through a procedure that complies with established confidentiality standards.

## 7.4. RECOMMENDATIONS ON REHABILITATION

### To the Kosovo authorities:

- a)** Within the amendment of the Law on the Status and the Rights of the Martyrs, Invalids, Veterans, Members of the Kosova Liberation Army, Civilian Victims of War and their Families, ensure that survivors of sexual violence will be entitled to free public-health services including costs of medical supplies, lab exams, and medications regardless of the level of disability;
- b)** Design a psychosocial programme for long-term rehabilitation of survivors of sexual violence;

### To NGOs:

- c)** Expand the network of qualified NGOs throughout Kosovo, including from non-majority communities providing quality psychosocial support.

## 7.5. RECOMMENDATIONS ON SATISFACTION

### To the Kosovo authorities:

- a)** Make an official public declaration to recognize the human-rights violations suffered by survivors of sexual violence and to destigmatise sexual violence;
- b)** Design, budget and implement an immediate coordinated, comprehensive and participative general awareness-raising campaign to restore the rights and dignity of survivors and destigmatise sexual violence; and encourage survivors of non-majority communities to come forward;

### To NGOs:

- c)** Capitalize on the existing initiatives toward comprehensive, survivor-centred awareness-raising campaigns.

To the international community:

- d)** Mobilize its existing networks and allocate increased funding to support this awareness-raising campaign;
- e)** Undertake efforts toward the inclusion of conflict-related gross human-rights violations and violations of international humanitarian law in the current EU-facilitated political dialogue between Belgrade and Prishtinë/Priština;

## 7.6. RECOMMENDATIONS ON LEGAL REDRESS

To the Kosovo authorities:

- a)** Increase and broaden awareness-raising efforts to provide more information to survivors of sexual violence about the investigations procedures and prosecutorial process;
- b)** Produce an information leaflet in local languages for survivors and witnesses about their rights throughout the judicial process;
- c)** Make available intensified psychosocial support to survivors during the investigations, trials and beyond;
- d)** Ensure that procedural safeguards guaranteed in the KCPC, Law on Witness Protection, and any other relevant legislation are fully implemented.

To EULEX:

- e)** Develop and implement an institution-wide survivor-centred agenda to investigate, prosecute, and adjudicate cases of conflict-related sexual violence;
- f)** Ensure that international investigators and prosecutors are deployed for at least two years to ensure continuity of investigations and prosecutions;
- g)** Assign the same investigator and language assistant for the duration of the investigations process of each case and, when this is not possible, ensure an effective handover, with emphasis on the specific needs of survivors of sexual gender-based violence;
- h)** Ensure through selection, pre-deployment and in-service training that EULEX investigators, prosecutors, and judges, are aware of and/or provided with information about social, historical and cultural specificities in Kosovo;

- i) Ensure availability of women and men investigators and language assistants from different communities depending on the specificities of each case;
- j) Ensure the availability of secure, non-descript locations to conduct interviews with survivors, to avoid their identification;

To the Kosovo Judicial Institute and the Kosovo Chamber of Advocates:

- k) Develop and produce a training manual for judges and prosecutors and defence council on specificities of judicial process on conflict-related sexual violence.

To the International Community:

- l) Provide financial and technical assistance to the Kosovo authorities in ensuring legal redress for survivors of sexual violence

## Annex 1: List of Key Stakeholders Consulted

In the course of the research, individuals belonging to the various organizations, institutions and networks listed below were approached and interviewed. In addition, numerous other individuals not working for any of these entities were met due to their activism and/or specific knowledge in sexual gender-based violence related to armed conflict in and out Kosovo. Special tribute has to be given to survivors themselves, who have agreed to meet and discuss with the consultant.

Agency for Gender Equality;  
 Amnesty International;  
 Association of Former Political Prisoners of Kosovo;  
 Centre for the Protection of Women and Children;  
 Centre for Research Documentation and Publication;  
 Council for the Protection of Human Rights and Freedoms;  
 Embassy of Finland;  
 EULEX;  
 Humanitarian Law Centre (Pristina and Belgrade);  
 Institute for the Research of War Crimes;  
 International Centre for Transitional Justice;  
 Kosova Rehabilitation Centre for Torture Victims;  
 Kosova Health Foundation;  
 Kosovo Assembly;  
 Kosovo Health Foundation;  
 Kosovo Women's Network;  
 Medica Gjakova;  
 Medica Kosova;  
 Medica Zenica (Federation of Bosnia and Heregovina);  
 Ministry of European Integration;  
 Ministry of Labour and Social Welfare;  
 Network for RAE Women;  
 Physicians for Human Rights;  
 Regional Community Mental Health Centre - Gjakovë/Đakovica;  
 Security and Gender Sub-Group;  
 SPRK;  
 Swiss Association against Impunity (TRIAL);  
 University of Pristina;  
 UNDP;  
 UNFPA;  
 UN Women;  
 Viktimolosko drustvo Srbije (Victimology Society of Serbia).

## Annex 2: Profiles of Organizations Providing Rehabilitative Services

### Medica Kosova<sup>1</sup>

Medica Kosova is an NGO that since 1999 has offered interdisciplinary psychosocial, medical and legal services, as well as income-generating programmes to improve the living conditions of war-traumatized women and girls and those with special needs. Medica Kosova plays an important role in shaping gender policy at the local level and Kosovo-wide and supports research based on its expertise in the field of trauma and the impact of trauma on women's well-being.

The goal of the organization is to improve the health situation and living conditions of women in Kosovo who have been traumatized by the armed conflict with special support from women who experienced sexual violence during the armed conflict regardless of their ethnicity, religion, and sexual orientation.

The organization's goal has been achieved through following objectives/activities:

1. Psychosocial support to start the process of moving forward after traumatic events through individual and group counselling offered at Medica Kosova's office and villages of Gjakovë/Đakovica Municipality and beyond;
2. Primary health care through counselling and gynaecological visits with a psychosomatic approach, offered to women and girls from Gjakovë/Đakovica and Deçan/Dečani Municipality by the mobile unit of Medica Kosova;
3. Promotion and realization of human and legal rights of women and girls through individual and group counselling in the centre and villages of Gjakovë/Đakovica Municipality as well as their representation in local courts and other relevant institutions;
4. Lobbying and advocacy work at the local and international levels to address women's needs and to shape policy in accordance with their needs; and
5. Developing income-generating projects for improving women's living conditions

#### *A Bit of Background Information:*

The Medica Kosova methodology uses an indirect approach to address conflict-related sexual violence. Since the end of the war, it began using gynaecological exams as an entry point to screen women for sexual violence. They initially began to provide services with a mobile ambulance and, over time, they began to provide stationary services in Gjakovë/Đakovica. This enabled them to spend more time with each woman, without the pressure of family members in the village at the mobile ambulance.

With respect to counselling, initially Medica Kosova started off with individual

<sup>1</sup> Medica Kosova. From War Trauma to Integration: A Publication Documenting a Decade of Work by Medica Kosova (1999 – 2009). 2009.

## Medica Gjakova

In March 2011, another NGO Medica Gjakova also began to provide individual and group counselling to war-traumatized women, including to survivors of sexual violence. Those receiving counselling include some former users of Medica Kosova. As well, some of the counsellors at Medica Gjakova include those who previously worked at Medica Kosova.

Medica Gjakova also implements some economic activities with the village-level groups. Medica Gjakova has encouraged the aforementioned Women Farmer's Cooperative (Kooperativa Bujqesore Gratë Fermere Duarte Dardanës Gjakovë) to begin operations in approximately October 2012. More information about the cooperative can be found in Section 5.7.

### Kosova Rehabilitation Centre for Torture Victims (KRCT)

KRCT was founded in the immediate aftermath of the armed conflict in Kosovo in the fall of 1999. It provides psychological and medical rehabilitation to individuals who have experienced traumatic events as a consequence of massive displacement, large-scale political violence, or other conflict-related trauma and the loss of close relatives or friends. This group includes ex-prisoners, survivors of massacres and sexual violence, widows, orphans, returnees, and other victims of torture and other cruel, inhuman or degrading treatment or punishment, and their family members. Psychologists, psychiatrists, social workers, and medical doctors deliver its rehabilitation services. The KRCT is headquartered in Prishtinë/Priština, but operates in four other regions of Kosovo, where the number of survivors of torture and other war-traumatized individuals is particularly high and therefore the needs are greatest (Prishtinë/Priština, Skenderaj/Serbica, Drenas/Glogovac, and Suhareke/Suvareka).

Within this context, KRCT has provided medical and psychosocial support to survivors of conflict-related sexual violence. It has treated approximately 40 survivors of sexual violence through individual (and group) counselling. Currently it has the capacity and resources to provide intensive therapy to survivors for three months, and then follow up on an impromptu basis, with individual survivors of sexual violence.

Beyond direct services provision, KRCT has also more recently began to provide capacity-building in the psychosocial field, training programmes for health professionals, repatriation, skills-building programmes, legal support, prevention and research.

KRCT also participates in the relevant networks (Balkan and European Networks of Rehabilitation Centres) and is an accredited member of International Rehabilitation Council for Torture Victims.

### The Centre for the Protection of Women of Children (CPWC)

CPWC was founded in 1993 as a centre for gynaecological and paediatric services following the denial of access to gynaecological health-care services by Serbian Officials. CPWC provided gynaecological, paediatric and psychological services to women, including victims of violence. CPWC registered and/or provided assistance to 36 cases of conflict-related rape or other forms of sexual violence survivors before March 1999, and to 26 cases after June 1999. The former Head of CPWC, Ms. Sevdije Ahmeti, also documented cases of human-rights abuses (including sexual violence) as an independent human-rights monitor. During the armed conflict, in particular, she regularly made this documentation available to international human-rights organizations, embassies, and other key stakeholders across the world.

After 1999, CPWC diversified its activities and established nine field offices in Mitrovicë/Mitrovica, Skenderaj/Srbica, Pejë/Peć, Deçan/Dečani, Gjakovë/Đakovica, Rahovec/Orahovac, Malishevë/Mališevo, Suharekë/Suva Reka, and Kaçanik/Kaçanik, which were severely damaged by the war. These field offices are no longer functioning under the guise of the original CPWC. The CPWC in Prishtinë/Priština currently functions as a shelter for women experiencing domestic violence and for victims of trafficking. The CPWC in Drenas/Drenica is also functioning, and has recently received a grant from the KWN (with donor funding the Austrian Development Agency) to identify and support the reintegration of survivors of rape in the Drenas/Drenica region

### Women's Wellness Centre – Safe House (WWC-SH)

WWC - SH is a non-governmental organization operating in the Pejë /Peć region. The mission of the WWC-SH is to improve the health, well-being and status of Kosovo women and girls by responding to their practical needs as survivors of violence in Pejë/Peć region; and by protecting, sheltering, advocating and raising awareness for their rights and interests.

WWC-SH is a multi-service women's centre with a wide spectrum of activities in rural and urban areas, offering: education, counselling, different courses, seminars, trainings/presentations to different groups including professionals (healthcare providers, social workers, police, judges, and lawyers, public prosecutor) to recognize and respond to survivors of gender-based violence (GBV).

Starting with its GBV programme in 1999, WWC-SH durably helped to break the silence about violence, especially domestic violence in the Pejë /Peć region. It has encouraged people to speak up about gender-based violence and make them aware of its consequences on the family cell. The four main programme areas in the focus of the WWC-SH are:

- Psychosocial counselling;
- Education and awareness-raising on GBV and counter-trafficking;
- Sheltering, direct/immediate care and support for the reintegration of survivors in society;
- Capacity-building and support for networking.

WWC-SH is covering four municipalities of the Pejë /Peć Region (Pejë /Peć, Deçan/Dečani, Istog/Istok, and Klinë/Klina) consisting of urban areas and rural zones with a total of 300,000 inhabitants and accepts users at the safe house from all over Kosovo. In December 2002 WWC-SH opened a closed type of shelter "safe house," which offers accommodation, food and clothing, medical assistance, psychosocial support, emotional support, awareness-raising and empowerment training, and other relaxation activities for women victims of domestic violence. The capacity of the safe house is 18 beds.

In 2006, WWC-SH and the Reproductive Health Response in Conflict Consortium also published a study on the Prevalence of GBV in nine villages in the Pejë/Peć Region. The study provided an estimated incidence of sexual violence during the armed conflict and also identified the resources on which survivors had relied to address some of the psychological consequences of this violence.

### Norma Lawyer's Association<sup>3</sup>

Since its establishment in 1998, Norma Legal Aid NGO has offered legal aid in the areas of family law, inheritance, criminal, labor relations, property, and domestic violence. Norma's staff also conducts research on gender equality to identify violations of international and national legal frameworks. It also, by itself or in cooperation with organizations, conducts professional meetings, counselling, seminars, workshops, trainings and other forms of professional education. Norma's activities focus largely on women in general but also specifically on women and children from minority groups and persons with disabilities. Currently, there are five lawyers and one financial worker engaged in the activities of Norma.

## Annex 3: Major Advocacy Efforts toward Reparations for Survivors of Sexual Violence in the Armed Conflict in Kosovo

Date	Action
November 2003	The Legal Department of Medica Kosova organized a three-day Legal Conference on Sexual Crimes During the War. One of the main goals of the conference was to identify obstacles in the documentation of this violence as a war crime. Conference participants included representatives of different local and international institutions and non-governmental organizations.
Early 2005	The (former) international Ombudsperson Kosovo sent a letter to the Prime Minister of Kosovo, Mr. Ramush Haradinaj, asking Kosovo authorities to take measures to ensure that services are available to survivors of war rape.

<sup>3</sup> Norma Lawyer's Association. Institutional Website. Accessed on 12 December 2012.

Date	Action
2006-2007	<p>Medica Kosova, with the support of UN Women, advocated for consideration of survivors of sexual violence in the draft of the Law on the Status and the Rights of the Martyrs, Invalids, Veterans, Members of the KLA, Civilian Victims of War and their Families. Specifically, the advocacy focused on considering survivors of conflict-related sexual violence (predominantly women) as a special category of civilian victims, and on providing recommendations on how to provide institutional support to this group.</p> <p>KRCT also advocated, to no avail, for the inclusion of psychological suffering in the above-mentioned draft law. Inclusion of psychological suffering in the law might have made it possible to regulate reparations for survivors of sexual violence in the law's administrative instructions.</p>
2011	<p>The Kosovo Women's Network (KWN) sent a letter to the director of the IRCW, welcoming the establishment of the institute and highlighting the importance of investigating crimes of sexual violence that took place during the war in Kosovo.</p>
22 February 2012	<p>Kosovo authorities established a Working Group to develop an Action Plan for the Implementation of UNSCR 1325. The Agency for Gender Equality (AGE), under the auspices of the Prime Minister's Office, is the agency leading the development of the 1325 Action Plan. The working group includes 28 members from Kosovo authorities, Civil Society and the UN. UN Women and OHCHR are providing financial and technical assistance for development of the action plan.</p> <p>One of the three main outcomes of the action plan focused on establishing mechanisms to ensure the protection, access to justice, rehabilitation and re-integration of the victims of sexual violence, torture and other forms of violence. Under this outcome, there are proposed actions to support to draft and send a law to Parliament to provide compensation and rehabilitation for survivors of sexual violence; identification and documentation of cases of sexual violence; improved access to justice for survivors of conflict-related sexual violence; development of programmes to provide credit to empower survivors of conflict-related sexual violence; and awareness-raising about conflict-related sexual violence.</p>
8 March 2012	<p>On 8 March 2012 (International Women's Day), the KWN organized a demonstration in front of the National Theatre in Prishtinë/Priština with the motto, "Forget Flowers: We Want Justice for Women Raped During the War." The protest called upon the Kosovo authorities to acknowledge the crimes that were committed against women and to provide them with legal protection equivalent to that received by men who suffered war crimes.<sup>1</sup></p>

<sup>1</sup>Kosova Women's Network. Press Release: Forget Flowers: Women Call for Justice for War-Raped Women on 8 March, 2 March 2012.

Date	Action
9 March 2012	<p>The Commission on Human Rights, Gender and Missing Persons held a special session in Parliament on sexual violence against women during the armed conflict. Within this context, the Women's Caucus of the Kosovo Assembly submitted a resolution calling for particular support to women raped during the armed conflict and called upon local and international legal institutions to punish the perpetrators of these crimes, some of which contain elements of genocide, according to the resolution.</p> <p>As an immediate response to the events of 8 March, and the submission of the aforementioned parliamentary resolution, Ms. Vlora Çitaku, Minister of European Integration established a Task Force on Sexual Violence and Torture. Soon thereafter, discussions with civil society representatives and with the Head of EULEX took place.</p>
20 March 2012	<p>The EULEX Head of Mission, Xavier Bout de Marnhac, responded to the KWN letter of 8 March 2012. In the letter, Mr. de Marnhac reiterated the commitment of EULEX to investigate war crimes and bring cases to prosecution, including those where there are allegations of sexual violence against women. He also highlighted that EULEX investigators and prosecutors are aware of the necessity to prevent the retraumatisation of victims, and that its staff support victims with the appropriate means at their disposal, including by undertaking measures in relation to witness protection, where necessary. Mr. de Marnhac also highlighted the challenges related to investigating crimes that happened over 10 years ago, and the difficulties in obtaining witness testimony.</p>
June 2012	<p>Ms. Vlora Çitaku, Minister of European Integration, Ms. Susana Novobordeliu (MP), Medica Kosova, KRCT, the Ombudsperson Institution in Kosovo, and survivors of sexual violence held a dialogue on conflict-related sexual violence. The main conclusion of the dialogue was to have debates, campaigns, and changes in the law to address survivors' needs. At this point, the Minister of European Integration decided to make it her priority to support the issue of reparations for survivors of sexual violence.</p>
4 June 2012	<p>Kosovo authorities established an Inter-Ministerial Working Group on Dealing with the Past and Reconciliation (IMWG DwPR) under the auspices of the Prime Minister's Office to deal with gross human-rights violations and serious violations of international humanitarian law during the war and the transitional period. The mandate of the IMWG DwPR covers truth-seeking, reparations, justice and institutional reform and is mandated to establish a comprehensive, inclusive and gender-sensitive approach for dealing with the past in Kosovo by means of adopting a Transitional Justice Strategy.</p>

Date	Action
11 June 2012	The IRWC is inaugurated. It is an official body, under the Ministry of Justice, established to “collect, process, classify and store cases of war crimes, crimes against humanity and values, protected by international law.”
26 June 2012	KRCT organized a public performance focused on torture victims entitled, “Hear my voice” with a specific portion dedicated to women raped during the war, in commemoration of the International Day against Torture. The performance included the participation of Adem Demaci (former political prisoner).
5 September 2012	UN Women, UNDP and the larger UNKT (with financial support from the EU) hosted a Preparatory Meeting for the Global Open Day on Women, Peace and Security. It included representatives of women’s civil society organizations and members of the Kosovo Assembly. During the meeting, participants agreed to highlight the situation of survivors of conflict-related sexual violence and torture during the Open Day that would take place on 12 September.
5 September 2012	EULEX hosted a roundtable at which representatives of EULEX met with NGOs working with survivors, as well as UN Women and OHCHR. In particular, the SPRK highlighted the importance of victim testimony (to prove that sexual violence took place) and also the difficulties in so doing 13 years after the end of the armed conflict. The SPRK further emphasized that NGO service providers could best support the work of the SPRK by helping to find witnesses. It further highlighted that NGO service providers should avoid coaching survivors of sexual violence on what to say during the investigation and prosecution of cases of sexual violence (which would discredit the survivor).
5-6 September 2012	UNFPA and the Ministry of Human Rights and Refugees of BiH organized the conference Ensuring Justice, Reparations and Rehabilitation for Victims of Conflict Related Sexual Violence in Sarajevo, on 5-6 September 2012. It gathered over 100 participants from the region and beyond. KWN represented Kosovo at the conference. The conference served as a forum to begin to shape and define the framework for advancement of the work on conflict-related sexual violence.
12 September 2012	During UN Global Open Day on Women, Peace and Security, women’s civil-society organizations and the Women’s Caucus of the Kosovo Assembly, as well as several survivors of conflict-related sexual violence, met with the UN and EU leadership in Kosovo to discuss progress on women, peace and security with a particular focus on the situation of survivors of conflict-related sexual violence. The recommendations from the Open Day were sent for inclusion in the UN Secretary General’s Report on Women, Peace and Security to be presented to the Security Council during its annual debate on this topic. in October 2012.

<sup>2</sup> Decision on the establishment of Inter-Ministerial Working Group on Dealing with the Past and Reconciliation (WG DwPR), No. 03/77, 4 June 2012.

Date	Action
24 October 2012	The Kosovo Ministry of Health signs a Memorandum of Understanding with KRCT to provide free medications for one year to the KRCT. The medications will benefit survivors of sexual violence. The Minister of European Integration, Vlora Çitaku, played an integral role in advocating for this MOU. This is a first step in both a bottom-up and top-down approach to ensuring survivor access to rehabilitative services.
25 November 2012	The British Embassy in Prishtinë/Priština, organized a roundtable discussion on Preventing Sexual Violence in Conflict. The event was organized to mark the International Day for the Elimination of Violence against Women, linking it with the British Initiative from the Foreign Secretary "Preventing Sexual Violence in Conflict" with the participation of the President of Kosovo, Ms. Atifete Jahjaga. Ms. Vlora Çitaku, Minister of European Integration, stated that her Ministry was going to support a big campaign to raise awareness targeting men and boys with the message that "raped women were victims of war."
5/6 December 2012	<p>UN Women hosted two roundtables, one in Prishtinë/Priština, and one in Gjakovë/Đakovica to take stock of the situation in Kosovo and to share experiences from BiH toward inspiring further action to improve the status and situation of survivors of conflict-related sexual violence and torture.</p> <p>The roundtables gathered expert resource persons from BiH to share information on the right of survivors to remedies and reparations in accordance with international law and corresponding state obligations. In addition, the roundtable highlighted the development of SOPs at the initiative of Medica Zenica, in partnership with governmental and non-governmental stakeholders, to improve the coordination of support services for survivors of conflict-related sexual violence and witnesses testifying in war-crimes trials, before, during and after hearings. Over 100 Kosovo and international stakeholders took part in the roundtables, including experts from executive and judicial institutions, civil society, representatives of embassies, and international agencies.</p>

## Annex 4: List of Literature Review

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