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**Theory and Practice of  
Gender Transformative Justice:  
The Case of Bosnia and Herzegovina**

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April 2019**

I hereby declare that this thesis has not been and will not be, submitted in whole or in part to another University for the award of any other degree.

Signature: .....

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## **ABBREVIATIONS**

AI: Amnesty International

BPFA: Beijing Declaration and Platform for Action

CEDAW: Convention on the Elimination of All Forms of Discrimination Against Women

CoE: Council of Europe

CRPC: Commission for Real Property Claims of Displaced Persons and Refugees (Dayton Peace Agreement - Annex 7)

DDR: Disarmament, Demobilization, and Reintegration

DPA: Dayton Peace Agreement

GC: General Comment

GR: General Recommendation

HDZ: Hrvatska Demokratska Zajednica (Croat Democratic Union)

HRC: Human Rights Chamber

ICC: International Criminal Court

ICCPR: International Covenant on Civil and Political Rights

ICESCR: International Covenant on Economic, Social, and Cultural Rights

ICL: International Criminal Law

ICTR: International Criminal Tribunal for Rwanda



ICTY: International Criminal Tribunal for the Former Yugoslavia

IHL: International Humanitarian Law

NAP: National Action Plan

NGO: Non-Governmental Organisation

OSCE: Organization for Security and Co-operation in Europe

SDA: Stranka Demokratske Akcije (Party of Democratic Action)

SDS: Srpska Demokratska Stranka (Serb Democratic Party)

TRC: Truth and Reconciliation Commission

UN: United Nations

UNHRC: United Nations Human Rights Commission

UN WPS: United Nations Women, Peace, and Security

UN SC: United Nations Security Council

WiB: Women in Black

## **ABSTRACT**

This thesis critically evaluates the extent to which the transitional justice process in Bosnia and Herzegovina has been gender transformative. Drawing upon conflict transformation and nascent transformative justice theories, the thesis suggests certain principles which should be used in order to remould the transitional justice mechanisms (trials, truth initiatives, reparations, and institutional reforms) for a gender transformative justice. The thesis offers two hypotheses. First, the thesis underlines the necessity of a gender transformative justice agenda in post-conflict reconstruction periods by claiming that only such an approach can challenge the reinforcement of patriarchal norms and traditional gender stereotypes in post-conflict societies. Second, the thesis suggests that the gender-neutral transitional justice process in Bosnia and Herzegovina still causes women's human rights violations today. The thesis finds that the transitional justice process has neglected many forms of gender-based violence in Bosnia and Herzegovina; these unaddressed and neglected acts of violence still continue today in different forms and to different extents.

Gender transformative justice aims to address gender inequalities during post-conflict reconstruction periods and to address the continuum of violence against women. The thesis evaluates whether both international and domestic legal frameworks in Bosnia and Herzegovina comply with this aim. Alongside legal and doctrinal analysis, I conducted interviews with both elites (representatives of local and international NGOs, lawyers, legal scholars, politicians, psycho-therapists, and human rights activists) and survivors of wartime violence (genocide survivors and war-trauma survivors). The research finds that the transition period in Bosnia and Herzegovina has failed to provide gender justice. By illustrating the ways in which peace and justice are defined and conceptualised by the interviewees in Bosnia and Herzegovina, the thesis illustrates the disparity between women's own understandings of justice and 'the understanding of justice' provided under international and domestic law. Synthesizing John Paul Lederach's conflict transformation theory with transformative justice theory through a gendered lens, this research argues that transformative justice theory needs to be further developed to address gender and to challenge the exclusion of women and of women's understandings of peace and justice from the scope of international law.

## CHAPTER 1: INTRODUCTION

This thesis critically evaluates the ongoing transitional justice and peacebuilding process in Bosnia and Herzegovina from a gender perspective. Specifically, it explores the extent to which the ongoing transitional justice process is gender transformative in this context. Through an analysis of the ongoing forms of violence against women, the thesis argues that women's peace and justice understandings are not taken into account in the transitional justice process in Bosnia and Herzegovina. Drawing upon theories of conflict transformation and transformative justice, the thesis suggests a theoretical framework for *gender transformative justice*. By proposing this framework, the thesis argues that in order to prevent transitional justice mechanisms in Bosnia and Herzegovina from reproducing patriarchal norms and traditional gender stereotypes, gender transformative justice is required.

This chapter initially presents the main research question and sub-questions of the thesis. After highlighting the growing theory of transformative justice and acknowledging and crediting the existing literature, this chapter locates the thesis within the wider literature and points out the contribution it makes. In section 1, the rationale for the thesis is underlined and the significance of both the thesis and the case study is indicated. In section 2 of this chapter, the methods employed are presented. The section also explains how these methods contribute to the research aim. In section 3, the challenges that were faced during the different stages of the study are discussed. At the end of the chapter, in section 4, the structure of the rest of the thesis is provided.

Transformative justice is born out of criticisms of the binary nature of transitional justice. The criticisms started with the omission of economic and social rights from the scope of transitional justice. Transformative justice has been proposed as an alternative justice approach for post-conflict societies. In addition, with the intervention of feminist perspectives, a gendered reading of transformative justice has developed. Gender transformative justice theory has been advocated in the literature to further the aims of gender equality. The main purpose of the theory is to eliminate patriarchal norms and gender stereotypes in periods of transition.

The core question in the thesis is '*to what extent has the transitional justice period in Bosnia and Herzegovina been gender transformative?*' To answer this main question, the thesis is divided into

two main pillars which address three sub-questions. The first pillar is a response to the gap between the translation of the conflict transformation concept from the political science field to the field of law. Transitional justice is a part and parcel of the field of conflict resolution in legal terms.<sup>1</sup> However, conflict resolution has been comprehensively criticised in the political science field because it is argued that, unlike conflict transformation, it does not engage “with the causes and consequences of violent conflict, which usually extend beyond the site of fighting”.<sup>2</sup> An alternative concept has been put forward by John Paul Lederach: conflict transformation. These heated debates have not had any impact on the field of law so far. Legal researchers, except a few,<sup>3</sup> have not paid enough attention to the conflict transformation theory in order to apply it to the legal sphere as *transformative justice*. The first pillar of this thesis is to engage with the theory of conflict transformation in order to expand and clarify the theory of transformative justice. The thesis takes a gender perspective for this goal and proposes a *gender transformative justice* model.

The second pillar of the thesis is to critically evaluate the ongoing peacebuilding and transition period in Bosnia and Herzegovina by using the model developed in the first pillar. The study presents a comprehensive analysis of the transition period in Bosnia and Herzegovina by applying gender transformative justice theory. The transitional justice mechanisms in Bosnia and Herzegovina (trials, truth initiatives<sup>4</sup>, reparations, and institutional reforms) are examined through this lens in order to evaluate the extent to which the transition period in Bosnia and Herzegovina has provided gender transformative justice. Instead of looking at the violence against women during the war, this thesis concerns with the ongoing forms of violence against women which are the consequences of the unaddressed and neglected forms of wartime violence.

The first sub-question that these pillars address is ‘what is gender transformative justice and what does it offer to women which is different from transitional justice?’ This sub-question

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<sup>1</sup> Mayesha Alam, *Women and Transitional Justice: Progress and Persistent Challenges in Retributive and Restorative Processes* (Palgrave 2014) 17.

<sup>2</sup> Hugh Miall, ‘Conflict Transformation: A Multi-Dimensional Task’ (Berghof Research Center 2004) <[http://edoc.vifapol.de/opus/volltexte/2013/4682/pdf/miall\\_handbook.pdf](http://edoc.vifapol.de/opus/volltexte/2013/4682/pdf/miall_handbook.pdf)> 3 October 2018, 17.

<sup>3</sup> Wendy Lambourne, ‘Transformative Justice, Reconciliation, and Peacebuilding’ in Susanne Buckley-Zistel *et al.* (eds), *Transitional Justice Theories* (Routledge 2014) pp 19-39; Wendy Lambourne and Vivianna Rodriguez Carreon, ‘Engendering Transitional Justice: A Transformative Approach to Building Peace and Attaining Human Rights for Women’ (2016) 17 *Human Rights Review* 71; Wendy Lambourne, ‘Transitional Justice and Peacebuilding after Mass Violence’ (2009) 3 *International Journal of Transitional Justice* 28.

<sup>4</sup> Since there are no formal truth commissions in Bosnia and Herzegovina, the existing truth initiatives by the civil society are called as ‘truth initiatives’.

teases out the problems with the transitional justice theory and practice from a gender point of view. Today when the legal regulations regarding gender equality in Bosnia and Herzegovina are examined, one might gain an impression that the transitional justice process has been gender-inclusive. However, the everyday experiences of women present a very different picture of the current situation. It is important to ask this sub-question since it justifies the necessity of a new approach. Also, with this sub-question, the difference between transitional justice and gender transformative justice is identified.

The second sub-question is whether international law and its application in Bosnia and Herzegovina provide an gender transformative agenda. This sub-question investigates, first, the extent to which international law has a gender transformative purpose. By using the answers for the first question, a gender transformative justice framework is created in order to answer this second question. International law regarding women in post-conflict societies is examined through this framework. Second, the domestic application of international law is teased out with this sub-question. The extent to which international law and domestic law carry out gender transformative justice is investigated with the answers to this sub-question.

The third sub-question is ‘what difficulties arise in the field for the implementation of gender transformative justice?’ The thesis aims to go beyond a legal and theoretical discussion; for this, it is crucial to scrutinise the reasons for the gaps between the law and its practice with this question. First, Bosnian women’s own peace and justice understandings are pointed out since the first two questions reveal the necessity of the accommodation of local understandings on peace and justice. Second, *how* the law falls short of providing women’s expectations is investigated. This sub-question, by engaging with the theory of gender transformative justice (sub-question 1) and the transformative characteristic of law if any (sub-question 2), aims to engage with the problems in the implementation of gender transformative justice in Bosnia and Herzegovina.

## **1. Rationale and Importance of the Thesis**

The rationale for this study emanates from the desire to illustrate the continuing impacts of war on women. The impact of war on women and the ‘gender-neutral’ character of international law in failing to deal with this impact have been investigated by the feminist

scholars as a first step to feminist intervention in transitional justice.<sup>5</sup> The literature strongly argues for inclusion of women in transitional justice mechanisms as both peacebuilders and also victims.<sup>6</sup> The *neutrality of law* in transitions has been approached critically by many legal scholars.<sup>7</sup> In addition, different pillars of (gender) justice are argued;<sup>8</sup> and identification of patriarchal norms as the main obstacles to the gender egalitarian peacebuilding processes occurred.<sup>9</sup> This brought the feminist literature to a point where legal regulations are approached with suspicion; and the ‘reality gaps’<sup>10</sup> in transitions are identified. This is where a desire for gender transformative justice occurs within the literature: to enforce the existing laws and not to send women back to societies where they would be victims again.<sup>11</sup> The present thesis builds on these claims by suggesting a theoretical framework for gender transformative justice and applying this model in the case of Bosnia and Herzegovina.

Except for a few studies,<sup>12</sup> there has been little comprehensive analysis of the long-term impacts of the war in Bosnia and Herzegovina on women. Transitional justice processes are based on binary categories (such as war or peace) which neglects the harms and violence following the formal end of a war. These processes are apt to reinforce the power of the stronger parties,<sup>13</sup> and women become the ones who often lose during this process. Although there is a growing literature on gender and transitional justice, little is known about women’s own experiences and expectations during and after the wars. Especially in countries such as

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<sup>5</sup> See Christine Chinkin, ‘Rape and Sexual Abuse of Women in International Law’ (1994) 5 *European Journal of International Law* 326; Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press 2000).

<sup>6</sup> See Christine Bell and Catherine O’Rourke, ‘Does Feminism Need a Theory of Transitional Justice? An Introductory Essay’ (2007) 1 *International Journal of Transitional Justice* 23; Fionnuala Ní Aoláin, ‘Women, Security, and the Patriarchy of Internationalized Transitional Justice’ (2009) 31 *Human Rights Quarterly* 1055; Lisa Yarwood (ed.), *Women and Transitional Justice: The Experience of Women as Participants* (Routledge 2013); See also Fionnuala Ní Aoláin, ‘Transformative Gender Justice?’ in Paul Gready and Simon Robins (eds), *From Transitional to Transformative Justice* (CUP 2019) pp 150-171.

<sup>7</sup> See Catherine Turner, ‘Deconstructing Transitional Justice’ (2013) 24 *Law Critique* 193; Rosemary Nagy, ‘Transitional Justice as a Global Project: Critical Reflections’ (2008) 29 *Third World Quarterly* 275; Alexander L. Hinton, *The Justice Facade: Trials of Transition in Cambodia* (OUP 2018); Lia Kent, *The Dynamics of Transitional Justice: International Models and Local Realities in East Timor* (Routledge 2012).

<sup>8</sup> See Wendy Lambourne and Vivianna Rodriguez Carreon, ‘Engendering Transitional Justice: A Transformative Approach to Building Peace and Attaining Human Rights for Women’ (2016) 17 *Human Rights Review* 71.

<sup>9</sup> See Ruth Rubio-Marín (ed.), *What Happened to the Women? Gender and Reparations for Human Rights Violations* (Social Science Research Council 2006); Ruth Rubio-Marín (ed.), *The Gender of Reparations: Unsettling Sexual Hierarchies While Redressing Human Rights Violations* (CUP 2009).

<sup>10</sup> Fionnuala Ní Aoláin, ‘Advancing Feminist Positioning in the Field of Transitional Justice’ (2012) 6 *International Journal of Transitional Justice* 205, 224.

<sup>11</sup> See Ruth Rubio-Marín (n 9) and Wendy Lambourne (n 3).

<sup>12</sup> Janine Natalya Clark, *Rape, Sexual Violence and Transitional Justice Challenges: Lessons from Bosnia-Herzegovina* (Routledge 2018); Elissa Helms, *Innocence and Victimhood: Gender, Nation, and Women’s Activism in Postwar Bosnia-Herzegovina* (University of Wisconsin Press 2013).

<sup>13</sup> Padraig McAuliffe, *Transforming Transitional Justice and the Malleability of Post-Conflict States* (Edward Elgar 2017) 9.

Bosnia and Herzegovina where the international community considers that a *successful* peacebuilding and transitional justice process has been completed, it becomes important to uncover the unaddressed violence against women which continues in different forms today. By aiming to identify the continuums in the violence and underlying reasons for the continuums, this research study provides important evidence to counter the argument that gender justice is provided in Bosnia and Herzegovina. It reveals how the violence still continues in varied forms and to different extents.

In the 1980s, with the rise of nationalist ideologies all around the Socialist Federal Republic of Yugoslavia, in all six socialist republics<sup>14</sup> and two autonomous provinces<sup>15</sup> within, nationalist parties came to power. The first free elections were won by nationalist parties in Bosnia and Herzegovina, Serbia, and Croatia on 18 November 1990: respectively, the (Muslim) Party of Democratic Action (Stranka Demokratske Akcije, SDA), The Serb Democratic Party (Srpska Demokratska Stranka, SDS) and the Croat Democratic Union (Hrvatska Demokratska Zajednica, HDZ).<sup>16</sup> In 1991, after the elections, Slovenia and Macedonia proclaimed their independence. Compared to the other republics, Slovenia and Macedonia were relatively homogenous in terms of ethnicity composition. However, the rest of the republics were multi-ethnic states in accordance with the very idea of ‘Yugoslavism’ and in compliance with Josip Broz Tito’s idea of Yugoslavia. With the Bosnia and Herzegovina’s and Croatia’s independence declarations, war started in 1992 and lasted until 1995.<sup>17</sup> The violence was severe especially in the areas which were ethnically mixed, such as Srebrenica, Vukovar, Prijedor.

In the war, rape and sexual violence against women has been one of the main ‘weapons of war’. Although all ethnicities used rape as a weapon, systematic rape was carried out only by Serbians for the purpose of ethnic cleansing. According to UN Commission’s investigation report on this issue, rape camps were created, and women were impregnated in these camps and released only when abortion was impossible.<sup>18</sup> The exact number of the rapes is

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<sup>14</sup> Alphabetically: Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia, Slovenia.

<sup>15</sup> Kosovo and Vojvodina.

<sup>16</sup> Xavier Bougarel, Elissa Helms and Ger Duijzings (eds), *The New Bosnian Mosaic: Identities, Memories and Moral Claims in a Post-War Society* (Ashgate 2007) Introduction, 4.

<sup>17</sup> Although the reasons for the war could be examined from different perspectives, such as economic inequalities between the republics, in this thesis, women are the main concern, and how the war affected women then and still today are the main investigation points.

<sup>18</sup> M. Cherif Bassiouni with Marcia McCormick, ‘Sexual Violence: An Invisible Weapon of War in the Former Yugoslavia’ (International Human Rights Law Institute 1996) <<http://mcherifbassiouni.com/wp-content/uploads/Sexual-Violence-an-Invisible-Weapon-of-War.pdf>> accessed 3 October 2018, 18.

unknown; however, the number is estimated to be over 20,000.<sup>19</sup> The war in Bosnia and Herzegovina was marked by this systematic use of rape and sexual violence against women.<sup>20</sup> Although wartime rape is by no means a new phenomenon,<sup>21</sup> the international and domestic attention focused on rape in this war was extraordinary.<sup>22</sup> In the International Tribunal for the former Yugoslavia (ICTY), which was created with United Nations Security Council Resolution 827, twenty percent of all charges brought before the ICTY involved sexual assault allegations.<sup>23</sup> Especially in the three infamous cases of Čelebići,<sup>24</sup> Furundžija,<sup>25</sup> and Kunarac<sup>26</sup> before the tribunal, several men were convicted of rape and sexual violence against women which are grave breaches of international humanitarian law and international criminal law.

Since then though it seems that Bosnia and Herzegovina lost the international community's attention and not much attention has been paid to the ongoing justice and peacebuilding processes. Except for a few scholars,<sup>27</sup> the current transitional justice processes and its impacts on Bosnian women are neglected. There has been little analysis with relation to what happens in the long-term in Bosnia and Herzegovina and to the survivors of wartime violence. Moreover, focusing only on rape and other forms of sexual violence has resulted in impunity for many other forms of human rights violations occurring during the war in Bosnia and Herzegovina. For example, economic and social rights violations remain unaddressed. These unaddressed and neglected women's human rights violations continue in different and/or aggravated forms. The binary nature of transitional justice aims to 'break with the past' and, therefore, decontextualizes and dehistoricises the ongoing and continuing violence against women.

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<sup>19</sup> Amnesty International, 'Bosnia and Herzegovina: Last chance for justice for over 20,000 wartime sexual violence survivors' <<https://www.amnesty.org/en/latest/news/2017/09/bosnia-and-herzegovina-last-chance-for-justice-for-over-20000-wartime-sexual-violence-survivors/>> accessed 3 October 2018.

<sup>20</sup> Inger Skjelsbæk, 'Victim and Survivor: Narrated Social Identities of Women who Experienced Rape during the War in Bosnia-Herzegovina' (2006) 16 *Feminism and Psychology* 373, 373.

<sup>21</sup> See Susan Brownmiller, *Against Our Will: Men, Women and Rape* (Ballantine Books 1975).

<sup>22</sup> Skjelsbæk (n 20).

<sup>23</sup> Karen Engle, 'Feminism and Its (Dis)contents: Criminalising Wartime Rape in Bosnia and Herzegovina' (2005) 99 *American Journal of International Law* 778, 781.

<sup>24</sup> This case includes three convictions: *Prosecutor v Zdravko Mucic aka "Pavo", Hazim Delic, Esad Landžo aka "Zenga", Zejnil Delalic* (Appeal Judgement), IT-96-21-A, ICTY, 20 February 2001 <<http://www.refworld.org/cases,ICTY,3ae6b7590.html>> accessed 3 October 2018.

<sup>25</sup> *Prosecutor v Furundžija* (Trial Judgement), IT-95-17/1-T, ICTY, 10 December 1998 <<http://www.refworld.org/cases,ICTY,40276a8a4.html>> accessed 3 October 2018.

<sup>26</sup> *Prosecutor v Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic* (Trial Judgment), IT-96-23-T & IT-96-23/1-T, ICTY, 22 February 2001 <<http://www.refworld.org/cases,ICTY,3ae6b7560.html>> accessed 3 October 2018.

<sup>27</sup> Janine Natalya Clark, *Rape, Sexual Violence and Transitional Justice Challenges: Lessons from Bosnia-Herzegovina* (Routledge 2018); Elissa Helms, *Innocence and Victimhood: Gender, Nation, and Women's Activism in Postwar Bosnia-Herzegovina* (University of Wisconsin Press 2013).



The violence that this thesis is concerned with is the ongoing forms of violence against women in Bosnia and Herzegovina. Although it is difficult to claim that wartime rape and other forms of sexual violence and its reasons have been fully understood by feminist scholars, there exists a great amount of literature focusing on wartime violence against women in Bosnia and Herzegovina.<sup>28</sup> However, long-term impacts of the war on women in Bosnia and Herzegovina remain an under-researched area except for a few studies.<sup>29</sup> This research complements this area by providing a case study with relation to women's problems and neglected experiences and expectations from the justice processes in Bosnia and Herzegovina.

This study is timely for three reasons. First, it engages contemporary concerns with the nature of transitional justice for women by presenting a case study. The differences between transitional justice and gender transformative justice can be clearly examined through the case of Bosnia and Herzegovina. Although there has been an official peace for more than 20 years (transitional justice), the extent to which the current process challenges the patriarchal norms and traditional gender stereotypes in the society is contested. To date, the case of Bosnia and Herzegovina has yet to be examined through a gender transformative justice perspective. Second, the growing theory of transformative justice requires more attention from the scholars in this field. Few studies have been able to draw on systematic research into the theoretical framework of transformative justice.<sup>30</sup> When it comes to engagement with transformative justice through a gender focus, much less research is found.<sup>31</sup> As Paul

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<sup>28</sup> See for example Alexandra Stiglmayer (ed.), *Mass Rape: the War Against Women in Bosnia-Herzegovina* (University of Nebraska Press 1992); Cynthia Cockburn, *The Space Between Us: Negotiating Gender and National Identities in Conflict* (Zed Books 1998); Cynthia Cockburn and Dubravka Zarkov (eds), *The Postwar Moment: Militarities, Masculinities, and International Peacekeeping* (Lawrence and Wishart 2002); Inger Skjelsbæk, 'Sexual Violence and War: Mapping out a Complex Relationship' (2001) 7 *European Journal of International Relations* 211; Nicola Henry, 'Witness to Rape: The Limits and Potential of International War Times Trials for Victims of Wartime Sexual Violence' (2009) 3 *International Journal of Transitional Justice* 114; Ruth Seifert, 'The Second Front: The Logic of Sexual Violence in Wars' (1996) 19 *Women's Studies International Forum* 35; Engle (n 23).

<sup>29</sup> See Clark (n 12); Janine Natalya Clark, *International Trials and Reconciliation: Assessing the Impact of the International Criminal Tribunal for the Former Yugoslavia* (Routledge 2014).

<sup>30</sup> Paul Gready and Simon Robins, 'From Transitional to Transformative Justice: A New Agenda for Practice' (2014) 8 *International Journal of Transitional Justice* 339; Paul Gready *et al.*, 'Transformative Justice - A Concept Note' (October 2010) <[http://www.wun.ac.uk/files/transformative\\_justice\\_-\\_concept\\_note\\_web\\_version.pdf](http://www.wun.ac.uk/files/transformative_justice_-_concept_note_web_version.pdf)> accessed 3 October 2018; Wendy Lambourne, 'Transformative Justice, Reconciliation, and Peacebuilding' in Susanne Buckley-Zistel *et al.* (eds), *Transitional Justice Theories* (Routledge 2014) pp 19-39; Wendy Lambourne and Vivianna Rodriguez Carreon, 'Engendering Transitional Justice: A Transformative Approach to Building Peace and Attaining Human Rights for Women' (2016) 17 *Human Rights Review* 71; Wendy Lambourne, 'Transitional Justice and Peacebuilding after Mass Violence' (2009) 3 *International Journal of Transitional Justice* 28.

<sup>31</sup> Wendy Lambourne and Vivianna Rodriguez Carreon, 'Engendering Transitional Justice: A Transformative Approach to Building Peace and Attaining Human Rights for Women' (2016) 17 *Human Rights Review* 71; Aisling Swaine, *Conflict Related Violence Against Women: Transforming Transition* (CUP 2018).

Gready and Simon Robins underlined, there is a clear need for assessments of transformative justice with relation to women within the literature.<sup>32</sup> Considering the nascent nature of transformative justice, the study aims to fill this gap by both developing the theoretical framework of gender transformative justice and also by providing insights regarding the meaning of gender transformative justice from the field.

Finally, the study is also quite timely and needed because of the law it is based on. This thesis has a specific focus on international law and its domestic implementation in Bosnia and Herzegovina. International laws and conventions, with the adoption of United Nations Security Council Women, Peace, and Security agenda and varied international declarations, have started to pay attention to the role of women in decision-making processes in transition periods. Although there is a growing literature critically evaluating these laws and conventions through a gender lens, much uncertainty exists regarding the domestic implementation of international law on this issue. In the case of Bosnia and Herzegovina, no previous study has investigated whether and how these laws have been adopted in domestic sphere, other than local and international non-governmental organisations' (NGOs) reports.

## **2. Research Methods**

In order to address the main and sub-questions of this thesis, qualitative research methods were adopted. As a first step, the transitional justice literature and the problems that it creates for women were scrutinised. Having identified the issues here, the growing literature on transformative justice was analysed; and how the theory of conflict transformation can help furthering the nascent theory of transformative justice was investigated through a gender lens. As a second step of the research methods taken, a period of fieldwork was conducted in Bosnia and Herzegovina from mid-May 2017 to end of July 2017. During this period, I worked as an intern in a local women's rights NGO (Medica Zenica). While I was not a full ethnographic observer in Bosnia and Herzegovina, I was able to gain insights due to my internship position. I conducted 26 semi-structured, in-depth interviews with women and men<sup>33</sup> who are representatives of local and international NGOs, lawyers, legal scholars, politicians, psycho-therapists, and human rights activists. Semi-structured interviewing

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<sup>32</sup> Gready and Robins (n 30) 361.

<sup>33</sup> One male and 25 female interviewees in total.

enabled me to ‘create space for participants to narrate their experiences’<sup>34</sup> which are relevant to my research topic. Some of these interviewees are genocide survivors and some went through war-trauma. Since interviewing these survivors has the possibility to recreate trauma and to bring back all the saddening memories,<sup>35</sup> with the guidance and in accordance with the instructions of University of Sussex Research Ethics Committee, certain precautions were taken during the fieldwork.<sup>36</sup>

From a simplistic legal standpoint, Bosnia and Herzegovina could be considered to have provided a gender-just transitional justice process. This is because Bosnia and Herzegovina signed and ratified the major international conventions regarding women’s rights, including Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979 and Council of Europe (CoE) Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) of 2011. By going beyond the legal frameworks, this thesis aims to look at the implementation of these laws. It examines the problems which make it difficult for the legal frameworks to come into effect.

Moreover, the reasons for the lack of implementation were also analysed. Interview questions were specifically designed for the purpose of identifying the underlying reasons for the lack of implementations of the existing laws. In addition to identifying the ongoing violations of women’s human rights, fieldwork data also scrutinised the underlying obstacles. Interviewees coming from different backgrounds and having varied war and post-war experiences provided first-hand data for the thesis. Such data exposed the implementation gap and the underlying reasons for it. Varied continuing violence experiences and/or observations of the interviewees helped this thesis to go beyond the legal frameworks and to uncover the real-life experiences of women in Bosnia and Herzegovina.

The theoretical approach of the thesis was justified by the real-life and on-the-ground experiences. In contrast to transitional justice, under the theory of transformative justice ‘one size fits all’ solutions are objected to. Transformative justice prioritises the context and

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<sup>34</sup> Anne Galletta, *Mastering the Semi-Structured Interview and Beyond: From Research Design to Analysis and Publication* (New York University Press 2013) 47; See also Simon Bradford and Fin Cullen (eds), *Research and Research Methods for Youth Practitioners* (Routledge 2012); Uwe Flick, *An Introduction to Qualitative Research* (5<sup>th</sup> edition, Sage 2014).

<sup>35</sup> See Elisabeth Jean Wood, ‘The Ethical Challenges of Field Research in Conflict Zones’ (2006) 29 *Qualitative Sociology* 373; Marie Smith and Gillian Robinson (eds), *Researching Violently Divided Societies: Ethical and Methodological Issues* (United Nations University Press 2001).

<sup>36</sup> For a comprehensive analysis and evaluation of the data gathering methods, see Chapter 6.

suggests context-dependent justice mechanisms. For this reason, it was essential to bring forward the local experiences and expectations of women in Bosnia and Herzegovina. During the fieldwork, the data gathered supported the theoretical framework of the thesis. The important principles of gender transformative justice, such as inclusion of economic and social rights to the agenda, echoed in the interviews without any interference of the researcher. This led to analysis of the interviews through a thematic analysis. Each principle of gender transformative justice was supported with the relevant interview data.

### 3. Challenges during the Different Stages of the Study

It is important to acknowledge the challenges that have been faced during the different phases of the research.

Defining 'Justice': Since the concept of justice is a core part of gender transformative justice, it becomes the concern of the thesis too. Although it is not in the scope of this thesis to define the concept, some challenges occurred while deciding whether or not gender justice has been provided in the field. Such an analysis makes the 'for whom?' question essential. That is why different categories of vulnerabilities are brought forward in order not to overlook varied human rights violations continuing today. However, different vulnerabilities and harms caused women to bring forward varied meanings for justice. As a result, during the analysis of the expectations from the women on-the-ground regarding the peace and justice process, justice seemed to be very *individual*. While genocide survivors demanded the perpetrators of their loved ones to be prosecuted, women who were not direct victims of the war complained about for instance economic and social rights violations. Although this does not mean that any of such demands are more or less important than the others, some may raise concerns regarding the incomprehensibility of post-conflict gender-justice. In this issue, the researcher concurs with Lia Kent when she said that "justice is an elusive concept that may have multiple socially embedded meanings".<sup>37</sup> In addition to acknowledging the elusive nature of the concept of justice, the researcher also aimed to illustrate how some particular understandings of justice are neglected in Bosnia and Herzegovina whereas others are prioritised by bringing forward as many experiences as possible in the fieldwork time frame. However, it cannot be claimed that in this thesis all the voices in the field have been heard.

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<sup>37</sup> Kent (n 7) 43.

The fieldwork data remains limited with 26 people's own understandings and expectations from the ongoing peacebuilding and justice process. Although the sample size and variety ensure that a demand for gender transformative justice occurs in the field, these findings still remain limited to the 26 interviewees.

Defining 'Transformative': There are ongoing peacebuilding and justice initiatives in Bosnia and Herzegovina today. The purpose of this thesis, under the gender transformative approach, has been to identify the extent to which such projects, laws, and initiatives challenge the structural violence, patriarchal norms, and gender stereotypes. Any law reproducing nationalism or militarism, and thus reinforcing gender subordination has been considered as *not-transformative*. However, some initiatives or projects have transformative impact for individuals despite reinforcing the gender stereotypes. For instance, many women's rights NGOs in Bosnia and Herzegovina today maintain projects in accordance with the gender stereotypes, such as hairdressing, tailoring, or sewing. In a post-conflict society, such projects become important, even though their impact remains very limited and *not-transformative*. Working during the fieldwork in an NGO maintaining such projects enabled the researcher to examine closely the importance of such initiatives for individual women involved in the projects. However, the extent to which such projects are necessary or whether they should be replaced with 'more transformative' projects depends on the (feminist) perspective that one takes regarding the meaning and scope of transformation.

Defining 'Feminism in Transitions': A feminist scholarship has grown in the field of transitional justice. Provision of gender equality and subversion of gender inequalities become the main pillars of this scholarship. Being in the field introduces many forms, interpretations, and understandings of feminism. It has been striking to observe how some of these understandings collided. For instance, UN Security Council Women, Peace, and Security (WPS) Resolutions encourage the state parties to employ women to their military and police forces. Bosnia and Herzegovina adopts these resolutions in its domestic sphere and today increasingly employ women into the police forces and military. Requirements for being military personnel were adjusted in order to enable more women to be able to apply and participate later on. Bosnia and Herzegovina by adopting a comprehensive approach consider WPS Resolutions binding and evaluates these resolutions together with other international law sources, like CEDAW and Istanbul Convention. Thus, Bosnia and Herzegovina simply practices international law in its domestic sphere.

However, such practice has been critically approached by my interviewees since it does not challenge the root causes of the violence: militarism. Similar to this, many peacebuilding and justice projects led by state institutions or women's rights NGOs have also been criticised for promoting gender stereotypes in the society. Some interviewees severely criticised the projects centred around sewing, hairdressing, and tailoring for reproducing patriarchal norms and traditional gender roles. This shows that different and at the same time colliding understandings of post-conflict gender-justice exist in Bosnia and Herzegovina today. The term of gender-justice carries different meanings for different actors in the field. Whereas women's participation in the military or the police forces are considered as a positive step by some women, others may consider this as a way of reinforcing the militarist state structures. It becomes a challenge for the researcher in the field to deconstruct the ways in which gender-justice and feminism are constructed in that particular society and to decide which interpretation of feminism carries *greater justice* to women.

Making such a decision also puts the researcher in a challenging position. Although analysing the process through gender transformative justice provides the researcher with a certain approach to consider the transformative impacts of the initiatives, it is still open to question whether *an outsider* should be allowed to make such a decision. To mitigate the impact of such a problematic situation, in the thesis, interview extracts have been given space as much as possible. Colliding opinions regarding the impacts of the peacebuilding and justice initiatives have been presented. By this, the readers are aimed to be given an opportunity to hear the voices of the women at stake without any interference of the researcher. At the end, women on-the-ground should be the only ones who can decide on what provides *more justice* to them.

#### **4. Thesis Structure**

The thesis is made up of nine chapters, which can be grouped in three sections.

The first section includes chapters 1, 2, and 3 which constitute the theoretical framework of the thesis. In the first chapter, Introduction, I have given insight into the importance of incorporating gender into the analysis of transitional justice briefly, and located my thesis into this literature by bringing forward its original research aims and questions. In chapters 2 and 3, gender transformative justice theory is introduced with its original framework for

this thesis by engaging with the theories of conflict transformation and transformative justice. These chapters are to provide a basis to critically evaluate the extent to which international law is 'gender transformative'. After the evaluation, it is argued that international law is not gender transformative for women in post-conflict countries.

Chapter 2 presents the theoretical framework for the thesis. Here, I argue that there are problems with the ongoing transitional justice processes and argue for a new approach. I engage with theory of conflict transformation in order to derive principles for gender transformative justice. The focus uses John Paul Lederach's understandings of the concepts of conflict and peace(building). The chapter examines why conflict occurs and how it continues in the 'post-conflict' zones for women on an everyday basis. Lederach's interpretation and analysis of the concepts of conflict, violence, and peace overlaps with my own understandings of these terms (although Lederach's theory remains 'gender-neutral'): these terms need to be deconstructed. Lederach's theory is considered and applied for a gender transformative justice agenda. Four categories are conceived upon the engagement with the theories of both conflict transformation and transformative justice. It has been claimed that for gender transformative justice, the following principles need to be achieved in the field: contextuality; continuum of violence; going beyond legal justice; and addressing the root causes of the violence. The first three principles are discussed in depth in this chapter while the last one (addressing the root causes of the violence) is examined in the following chapter.

Gender transformative justice aims to address the root causes of the violence against women in order to prevent any recurrence in the future. Chapter 3 provides an engagement with feminist literature to question whether feminist theories could help to understand the links between peacetime and wartime violence against women. Although I by no means consider wartime and peacetime violence against women equivalent, I concur with some feminist theorists' opinions when they claim that during both war and peace the patriarchy dimension of violence remains the same. By the patriarchal dimension, I imply the meanings attached to any forms of wartime violence against women, which are constructed in the peacetimes. This chapter argues that such meanings are carried along wartimes and peacetimes similarly. Thus, gender transformative justice, in addition to criminalization of such acts under international law, is expected to illustrate and address these continuing forms and reasons of the violence, and create a legal framework challenging such patterns.

The second section of the thesis examines the impact of international law on transitional justice practice to evaluate how this legal framework has shaped the individual states' *practice* of transitional justice.

Chapter 4 focuses on the United Nations-originated law which specifically concerns about women and peacebuilding issues: Women, Peace, and Security (WPS) Resolutions. The reason for focusing on the WPS Resolutions is that this agenda has a potential to provide gender transformative justice. Although International Humanitarian Law (IHL) and International Criminal Law (ICL) have historically contributed to the criminalisation of wartime sexual violence and rape, here women are mainly given only victim roles, and any long-term solutions in order to transform their roles after the conflicts in the patriarchal societies are rarely offered. However, the United Nations starting from the Beijing Conference and later with its WPS agenda put forward a language seeing women as *actors* of international law. Although the terminology in the agenda occasionally changes in different resolutions, transformation enters the agenda and Security Council resolutions start recommending states to take measures to prevent women from being (re-)victimised in post-conflict settings. Regarding the implementation of this international law agenda, National Action Plans (NAPs) have been recommended for the states to adopt in their domestic spheres. Bosnia and Herzegovina is one of the first states to adopt an NAP and make changes to its legal, judicial, and administrative bodies. This chapter examines the extent to which both the WPS agenda and NAPs of Bosnia and Herzegovina have been transformative for women.

Chapter 5 continues analysing international law. In this chapter, I look at specifically *right to an effective remedy* in conflict and post-conflict contexts. This right is provided to the victims and witnesses of the conflicts under the *reparations* mechanisms. I engage with the international law documents and discuss the extent to which they aim to provide gender transformative justice. I explore the recent aptitude in international law towards taking transformative steps for women by addressing the inequalities between women and men that *predate the conflict*. Such discourse challenges the 'peace' and 'conflict' dichotomy in accordance with the feminist approaches in Chapter 3 and explores the violence that women experience before, during and after the conflicts. Structural inequalities (see Chapter 2 for further discussion) are underlined in these international declarations. Having looked at the



international law on reparations, I direct my attention to judicial and administrative responses to reparations claims in Bosnia and Herzegovina. My main aim here is to evaluate the extent to which both international law and the domestic implementation of it provide gender transformative justice through reparations mechanisms.

The thesis turns to the empirical section having analysed both the theoretical framework and international and domestic legal regulations. This section consists of the following three chapters.

Chapter 6 illustrates the data gathering methods for the fieldwork study. This thesis is not a doctrinal work; empirical data and engagement with the field is a core part of the study. It is striking that although qualitative research is highly encouraged for and conducted by legal scholars, an elaboration on the data gathering methods are frequently neglected in the literature. As a result, empirical data can be provided without presenting any information about the language that the data derived, or the context and conditions that the researcher has been through. In this chapter, I aim to take a reflexive approach before I present the data itself. Especially, for researchers working in conflict-affected areas, I personally believe that there are a number of lessons that could be learned from each other. Moreover, a researcher's profile (ethnic, religious, racial, sexual), positionality, and selection of the research subjects directly affect the fieldwork. This is the reason, among others, how the data becomes very original and how the data is based on that particular researcher's own experience. In addition to my personal experiences on-the-ground, I also engage with the existing literature on sensitive topics: such an engagement helps me immensely to reflect back on my position and location in the field. At the end of the chapter, I specifically focus on the interaction between the theory of the thesis and the data gathering methods and on how the theory shaped my methods.

In the fieldwork chapters, Chapters 7 and 8, I apply the principles of the model for gender transformative justice that I developed in Chapters 2 and 3 to the case study of this thesis: Bosnia and Herzegovina. After applying the model to international law and domestic law in Chapters 4 and 5, I turn my attention to the application of the laws on the ground and the extent to which the practice provides gender transformative justice. I focus on women's everyday experiences. I asked the interviewees how they experience *justice*, *peace*, and *post-conflict*. Engagement with the field strengthened my critical approach to transitional justice

and to its narrow way of looking at these concepts. Fieldwork data confirmed, concretised, and reinforced the necessity for gender transformative justice. I divided the fieldwork findings in these two chapters: in Chapter 7, I used three principles of gender transformative justice which are the principles brought forward in this thesis upon the analysis of conflict transformation and transformative justice theories: *the contextuality, addressing the root causes of violence, going beyond the legal justice pillar*. I question the extent to which the peacebuilding and transitional justice process in Bosnia and Herzegovina provides *justice* for women by taking into consideration these three principles.

In Chapter 8, I discuss the last principle of the model: *continuum of violence*. I argue that in Bosnia and Herzegovina violence against women continues in different forms today. Although there is a growing literature focusing on the increase in the domestic violence post-conflict, my fieldwork enabled me to explore many other neglected forms of war-related and war-aggravated violence which still continue in Bosnia and Herzegovina. I deal with different forms of violence which are even not considered in the scope of peacebuilding process. In the illusionary space, called peace, 'breaking with the past' becomes the main motto of the international community. Continuing violence, therefore, becomes decontextualized and dehistoricised. Especially, for women, who are the concern of this thesis, peace becomes a period and a space where violence changes form, and continues in the 'private' sphere.

Fieldwork data concretises this problem and underlines the need for transformative solutions for women. In the second section of this chapter, I posed an original question to my interviewees and I aimed to learn in this peacebuilding process, which steps (by any actor) they think that have been transformative for women. The answers have been striking. This is because most of the steps, initiatives or projects these women considered as transformative were bottom-up. The projects or initiatives that the international community apply were not brought forward as transformative steps in the answers. Some funding policies of the international community, in fact, have been considered as preventing transformative steps to be taken.

In Chapter 9, I provide a summary of the research. After the summary, the gaps in the literature are identified, which give inspiration for future research projects. Finally, I analyse the findings of the research by bringing forward my personal reflections and recommendations.

This thesis provides practical contributions. These give insights into the ways in which gender transformative justice might be provided in Bosnia and Herzegovina. By analysing how the current justice mechanisms reproduce patriarchy and neglect the causes of violence against women, a critical examination of transitional justice is presented to the attention of international and local stakeholders. The principles suggested for gender transformative justice are summarised in the recommendations section again; this is hoped to be a helpful guide for transitional justice scholars and practitioners both in Bosnia and Herzegovina and beyond.

Having put forward the structure of the thesis, now I turn to the theory chapter of the thesis: hereby engaging with the theory of conflict transformation and applying it to the legal sphere, I aim to contribute to the development of transformative justice theory. I claim such an engagement creates a clearer framework for gender transformative justice.

## CHAPTER 2: A GENDER APPROACH TO THE THEORY TRANSFORMATIVE JUSTICE: GENDER TRANSFORMATIVE JUSTICE

### 1. Introduction

This chapter elaborates the approach of the thesis and argues that transitional justice falls short of providing gender justice for post-conflict societies. By engaging with the theories of conflict transformation and transformative justice from a gender perspective, this chapter creates a model for gender transformative justice. To address this aim, section 2 argues for a new approach. The weaknesses of the current transitional justice theory and practice are discussed, and it is held that we need a new approach which has the potential to maintain a gender-just peace process in post-conflict societies. This new approach addresses the structural causes of a conflict and seeks to transform the political, economic and legal mechanisms in a society rather than only focusing on the symptoms of the conflicts. Section 2 examines the problems with the current transitional justice mechanisms in order to explain why a new approach is needed.

Section 3 discusses the theory of conflict transformation. I use this theory in order to read the expression ‘root causes of and structural violence’ with a gender focus. I explain the increase in the violence against women both during and after conflicts by bringing the pre-conflict ‘structural inequalities and structural violence’ terms forward. The theory of conflict transformation contextualises the violations of human rights and provides an extensive set of measures to provide a long-term and sustainable peace process. This section argues that the theory of conflict transformation helps to link the pre-, during and post-conflict situations of women to each other and to figure out the root causes of violence against women in a war-torn society.

In section 4, the nascent feminist literature on transformative justice is introduced. Although this term has only very recently come into the transitional justice literature, there is an established consensus among *feminist* transitional justice scholars regarding a need to create a transformative approach within transitional justice field.<sup>1</sup> However, there are also other

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<sup>1</sup> See Wendy Lambourne, ‘Transformative Justice, Reconciliation, and Peacebuilding’ in Susanne Buckley-Zistel *et al.* (eds), *Transitional Justice Theories* (Routledge 2014) pp 19-39; Wendy Lambourne and Vивиanna Rodriguez Carreon, ‘Engendering Transitional Justice: A Transformative Approach to Building Peace and Attaining Human Rights for Women’ (2016) 17 *Human Rights Review* 71; Margaret Urban Walker, ‘Transformative

significant scholars who claim that by overburdening transitional justice mechanisms, the literature is becoming unaware of the limitations on the field and transitional justice is losing its point.<sup>2</sup> The divided opinions are discussed and it is argued that a transformative approach within transitional justice is a necessary step for gender justice in post-conflict transitions. Otherwise, transitional justice processes fall short of providing a gender-just peace process in practice. The discussion covers the following questions: What does transformative justice offer in order to address the problems of the transitional justice mechanisms and processes? What is the scope of transformative justice theory? How can we locate gender issue within this theory?

The discussion in this chapter reaffirms the gap identified by Wendy Lambourne regarding a transformative approach within transitional justice theory.<sup>3</sup> According to Lambourne, although the aims of peace, reconciliation and justice are inextricably linked, transitional justice scholars continue to focus only on the “promotion of human rights, democracy and the rule of law *without situating their research in a peacebuilding context*”.<sup>4</sup> This has resulted in a primary focus on legal justice in post-conflict reconstruction processes. The main limitation of transitional justice has been its excessive emphasis on legal/corrective justice.<sup>5</sup> This focus has left out the social, economic, and political structures and relationships which have the potential to illustrate the underlying causes of the violence. This thesis adopts the approach of Lambourne by acknowledging the existence of different pillars of (transformative) justice as psycho-social justice, political justice, and economic justice in addition to legal justice.<sup>6</sup> However, the thesis goes beyond what Lambourne suggested and creates a concrete framework for gender transformative justice theory and practice by engaging with the theory of conflict transformation.

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Reparations? A Critical Look at a Current Trend in Thinking about Gender-just Reparations’ (2015) 10 *International Journal of Transitional Justice* 108.

<sup>2</sup> See Lars Waldorf, ‘Anticipating the Past: Transitional Justice and Socio-Economic Wrongs’ (2012) 21 *Social and Legal Studies* 171.

<sup>3</sup> Lambourne (n 1) 19.

<sup>4</sup> *ibid* (emphasis added).

<sup>5</sup> Kieran McEvoy, ‘Beyond Legalism: Towards a Thicker Understanding of Transitional Justice’ (2007) 34 *Journal of Law and Society* 411, 413.

<sup>6</sup> Lambourne (n 1) 22.

## 2. Limitations of Transitional Justice: Requirements for a Transformative Justice

This section argues that transitional justice is limited in its ability to address gender justice. Scholars who have approached the field of transitional justice with a critical focus have emphasised the limitations of transitional justice mechanisms *in practice*. As Paul Gready and Simon Robins pointed out, “performance and impact of transitional justice mechanisms have been at best ambiguous and at times disappointing” in general.<sup>7</sup> One criticism in much of the literature on transitional justice is that the transitional justice model only focuses on physical and psychological harms<sup>8</sup> and misses addressing ‘web of harms’<sup>9</sup> and the ‘intersectionality’<sup>10</sup> of harms caused by mass violence. Transitional justice falls short of comprehending how socio-economic inequalities are causing multiple harms (physical, material, psychological and so on) for vulnerable groups, including women.<sup>11</sup>

Transitional justice is long way away from addressing these socio-economic injustices and the structural causes of the conflicts. As Thoms and Ron put it correctly, violations of economic and social rights create underlying and structural causes of conflicts by creating deep grievances and group identities.<sup>12</sup> According to their study, violations of civil and political rights are ‘proximate causes’<sup>13</sup> of conflicts such as regime transition and the abuse of personal integrity rights.<sup>14</sup> Rama Mani illustrates this by examining different case studies and finds that “unequal access to, distribution of, and opportunities for political power and socio-economic resources” are mostly the predisposing causes of conflicts.<sup>15</sup> The most

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<sup>7</sup> Paul Gready and Simon Robins, ‘From Transitional to Transformative Justice: A New Agenda for Practice’ (2014) 8 *International Journal of Transitional Justice* 339, 339.

<sup>8</sup> Lambourne & Rodriguez Carreon (n 1) 73.

<sup>9</sup> Catherine O’Rourke, *Gender Politics in Transitional Justice* (Routledge 2013) 56.

<sup>10</sup> See Eilish Rooney, ‘Intersectionality – A Resource for Societies in Transition’ (September 2010) Transitional Justice Institute Research Paper No.10-16 <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1685333](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1685333)> accessed 3 October 2018 and see also Fionnuala Ní Aoláin and Eilish Rooney, ‘Underenforcement and Intersectionality: Gendered Aspects of Transition for Women’ (2007) 1 *International Journal of Transitional Justice* 338.

<sup>11</sup> Lambourne and Rodriguez Carreon (n 1) 73.

<sup>12</sup> Oskar N. T. Thoms and James Ron, ‘Do Human Rights Violations Cause Internal Conflict’ (2007) 29 *Human Rights Quarterly* 674, 674.

<sup>13</sup> *ibid* 683.

<sup>14</sup> *ibid* 674.

<sup>15</sup> Rama Mani, *Beyond Retribution: Seeking Justice in the Shadows of War* (Polity 2002) 127.

serious disadvantage of the current civil and political rights-based transitional justice is that it deals only with the symptoms of conflicts rather than the causes.<sup>16</sup>

The current approach to transitional justice overlaps with the theory of conflict resolution. Many writers have also challenged conflict resolution theory on the grounds that it only aims to provide a ceasefire to conflict.<sup>17</sup> Ceasefire or the absence of personal violence has been named by Johan Galtung as ‘negative peace’<sup>18</sup> and widely discussed in peacebuilding literature.<sup>19</sup> In contrast, Galtung used the term ‘positive peace’ to define the absence of ‘structural violence’.<sup>20</sup> Positive peace, beyond negative peace, aims to terminate any possibility of the same conflicts recurring in the future.<sup>21</sup> Peacebuilding and conflict studies in the political science field have not paid much attention to ‘women question’. Gender equality has not been considered a crucial part of conflict resolution processes. Only very recently have feminist transitional justice scholars started to consider the concept of positive peace as an opportunity in order to address the structural causes of the violence against women in particular.

In the field of law, the concept of negative peace has been considered as equivalent to ‘retributive justice’. Under retributive justice, the punitive element is crucial<sup>22</sup> and the punishment of perpetrators is seen as a significant step which stops conflicts and stabilises a society. International Criminal Law (ICL) has grown upon this assumption. Since the Nuremburg Trials after Second World War, and more recently with the establishment of the International Criminal Tribunal for Rwanda (ICTR) and International Criminal Tribunal for the former Yugoslavia (ICTY) and finally the International Criminal Court (ICC), transitional

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<sup>16</sup> Paul Gready *et al.*, ‘Transformative Justice - A Concept Note’ (October 2010) <[http://www.wun.ac.uk/files/transformative\\_justice\\_-\\_concept\\_note\\_web\\_version.pdf](http://www.wun.ac.uk/files/transformative_justice_-_concept_note_web_version.pdf)> accessed 3 October 2018, 1.

<sup>17</sup> See Carrie Menkel-Meadow, ‘From Legal Disputes to Conflict Resolution and Human Problem Solving: Legal Dispute Resolution in a Multidisciplinary Context’ (2004) Georgetown University Law Centre <<http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1587&context=facpub>> accessed 3 October 2018.

<sup>18</sup> Johan Galtung, ‘Violence, Peace, and Peace Research’ (1969) 6 *Journal of Peace Research* 167, 183.

<sup>19</sup> See Nils Petter Gleditsch *et al.*, ‘Peace Research – Just the Study of War?’ (2014) 51 *Journal of Peace Research* 145; Paul F. Diehl, ‘Exploring Peace: Looking Beyond War and Negative Peace’ (2016) 60 *International Studies Quarterly* 1; Janine Natalya Clark, ‘From Negative to Positive Peace: The Case of Bosnia and Herzegovina’ (2009) 8 *Journal of Human Rights* 360.

<sup>20</sup> Galtung (n 18) 183.

<sup>21</sup> Donna Pankhurst, ‘The “Sex War” and Other Wars: Towards a Feminist Approach to Peace Building’ (2003) 13 *Development in Practice* 154, 156.

<sup>22</sup> Eirin Mobekk, ‘Transitional Justice in Post-Conflict Societies-Approaches to Reconciliation’ in Anna H. Ebnöther and Philipp Fluri (eds), *After Intervention: Public Security Management in Post-Conflict Societies* (Bureau for Security Policy at the Austrian Ministry of Defence 2005) pp 261-292, 277.

justice has remained perpetrator-centred under the dominance of international criminal law, instead of a victim-centred approach.<sup>23</sup>

As Mani claimed, trials (international or national) carry symbolic and legal value: first they give the message to the victims that their suffering is cared about by the international/national community and second, they signal to perpetrators that they cannot get away with impunity.<sup>24</sup> However, trials have not always been places for victims which provide them with satisfaction. This issue has been addressed by Nicola Henry who takes a gender analysis approach. She analysed the rape cases in international tribunals by asking whether these trials are providing ‘therapeutic justice’<sup>25</sup> for sexual violence victims. She reached the conclusion that these trials force victims to “describe the rape using language that confirms facts rather than expresses emotions”.<sup>26</sup> She quoted particular dialogues from trials and found that both prosecutors and defence lawyers focused exclusively on factual evidence, for example, the timing of the offence or the place where the offence took place.<sup>27</sup> The trials fall short of contributing therapeutic justice and instead they often become forums where victims are re-traumatised.<sup>28</sup> Henry confirmed the importance of the provision of *justice* which goes beyond criminal trials and the punishment of the perpetrators.<sup>29</sup>

As Mani has also shown following her analysis of different case studies, structural and systemic injustices suffered by civilians in conflict situations are not taken into account during trials.<sup>30</sup> Here, it is not in the scope of this section to discuss whether trials (should) have such a task in their nature or not. It is a fact that victims are “auxiliary rather than central to the criminal justice process”.<sup>31</sup> A victim-focused transitional justice has developed

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<sup>23</sup> For a reading on victim-centred transitional justice see Simon Robins, ‘Towards Victim-Centred Transitional Justice: Understanding the Needs of Families of the Disappeared in Postconflict Nepal’ (2011) 5 *International Journal of Transitional Justice* 75; Kieran McEvoy and Lorna McGregor, ‘Transitional Justice from Below: An Agenda for Research, Policy and Praxis’ in Kevin McEvoy and Lorna McGregor (eds), *Transitional Justice from Below: Grassroots Activism and the Struggle for Change* (Hart Publishing 2008) pp 1-13.

<sup>24</sup> Mani (n 15) 99.

<sup>25</sup> For a reading on therapeutic justice see Vanessa Pupavac, ‘International Therapeutic Peace and Justice in Bosnia’ (2004) 13 *Social and Legal Studies* 377.

<sup>26</sup> Nicola Henry, ‘Witness to Rape: The Limits and Potential of International War Crime Trials for Victims of Wartime Sexual Violence’ (2009) 3 *International Journal of Transitional Justice* 114, 125. See also Nicola Henry, *War and Rape: Law, Memory and Justice* (Routledge 2011). For a similar discussion in the Cambodian context see Alexander L. Hinton, *The Justice Facade: Trials of Transition in Cambodia* (OUP 2018).

<sup>27</sup> *ibid* 125.

<sup>28</sup> See Julie Mertus, ‘Shouting from the Bottom of the Well: The Impact of International Trials for Wartime Rape on Women’s Agency’ (2004) 6 *International Feminist Journal of Politics* 110.

<sup>29</sup> Henry (n 26) 134.

<sup>30</sup> Mani (n 15) 101.

<sup>31</sup> Laura C. Turano, ‘The Gender Dimension of Transitional Justice Mechanisms’ (2011) 43 *International Law and Politics* 1045, 1077.



alongside criminal justice approaches by bringing forward truth commissions, victim reparations and institutional reforms. Even so, these mechanisms are also not without problems and do not necessarily respond to structural violence and to the root causes of violence against women, as analysed below.

Truth commissions are increasingly popular forums where human rights violations and individuals who are responsible for these violations are identified.<sup>32</sup> These forums can be considered victim-centred since survivors come forward and testify about their own experiences during the conflict. Engendering truth commissions requires encouraging women to tell their experiences and putting in place processes that address the multiple justice needs of women from these testimonies.<sup>33</sup> As Nahla Valji pointed out, the first truth commissions in Latin America were ‘gender blind’.<sup>34</sup> However, recent commissions have been more representative for women by including both more women commissioners<sup>35</sup> and more statements from women.<sup>36</sup>

Although the number of women in truth commissions has increased, compared with the widespread incidences of sexual violence, for instance in South Africa, Peru, and Timor Leste, the provided statements have been far less than what had been expected in the first place.<sup>37</sup> In truth commissions, women, instead of their own experiences, prefer to give testimonies about the human rights violations perpetrated against their loved ones (husbands and sons).<sup>38</sup> One of the reasons for this preference is that “women experience *shame and fear of public ostracism* if they reveal that they were raped as a part of truth commission proceeding”.<sup>39</sup> Here, it is not claimed that truth commissions are the only forums which can

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<sup>32</sup> Vasuki Nesiah *et al.*, ‘Truth Commissions and Gender: Principles, Policies, and Procedures’ (July 2006) International Centre for Transitional Justice <[https://ictj.org/sites/default/files/ICTJ-Global-Commissions-Gender-2006-English\\_0.pdf](https://ictj.org/sites/default/files/ICTJ-Global-Commissions-Gender-2006-English_0.pdf)> accessed 3 October 2018, 1.

<sup>33</sup> Lambourne and Rodriguez Carreon (n 1) 79.

<sup>34</sup> Nahla Valji, ‘A Window of Opportunity: Making Transitional Justice Work for Women’ (October 2012) UN Women <<http://www.unwomen.org/~media/Headquarters/Attachments/Sections/Library/Publications/2012/10/06B-Making-Transitional-Justice-Work-for-Women.pdf>> accessed 3 October 2018, 9.

<sup>35</sup> *ibid* 10.

<sup>36</sup> *ibid* 11.

<sup>37</sup> Lambourne and Rodriguez Carreon (n 1) 79.

<sup>38</sup> Brandon Hamber and Ingrid Palmay, ‘Gender, Memorialization, and Symbolic Reparations’ in Ruth Rubio-Marín (ed.), *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations* (CUP 2009) pp 324–380, 332; Ruth Rubio-Marín, ‘Introduction: The Gender of Reparations: Setting the Agenda’ in Ruth Rubio-Marín (ed.), *What Happened to the Women?: Gender and Reparations for Human Rights Violations* (Social Science Research Council 2006) pp 20–47, 21; Susan Harris Rimmer, *Gender and Transitional Justice: The Women of East Timor* (Routledge 2010) 23; Bina D’Costa, *Nationbuilding, Gender and War Crimes in South Asia* (Routledge 2011) 181; Robert I. Rotberg and Dennis Thompson, *Truth v. Justice: The Morality of Truth Commissions* (Princeton University Press 2000) 55; Valji (n 34) 11.

<sup>39</sup> Lambourne and Rodriguez Carreon (n 1) 79 (emphasis added).

challenge gendered hierarchies in a post-conflict society and defy women's silence on their own experiences. Instead, it is important to see here how structural violence against women obstructs their voices and creates a public blindness against (women or men) sexual violence victims. Truth commissions, technically, cannot be the only places which can contend with gendered hierarchies in a society and build a gender-just post-conflict reconstruction on their own. However, truth commissions can still help understanding the patterns and underlying reasons of the violence against women in that particular society.

Truth commissions have a capacity to elaborate and report the ways in which violence occurs, for instance, by applying the theory of intersectionality. Intersectionality theory provides an analysis of how gendered forms of discrimination interact with other identities, such as class or ethnicity.<sup>40</sup> Being a woman of a different class or in a minority group results in different violations or enforcement issues. For instance, in Peru, 80% of sexual violence victims during armed conflict were rural women<sup>41</sup> and in Guatemala, indigenous women were those who were worst affected by the conflict.<sup>42</sup> If belonging to the same vulnerable group results in aggravated violence and the intersectionality of harms, here we can clearly observe structural violence. Structural inequalities (such as poverty, marginalisation and illiteracy) are important factors in identifying the different vulnerabilities in a conflict situation.

Transitional justice processes are expected to address these structural inequalities and root causes of violence for a gendered peacebuilding process. Truth commissions, while reporting human rights violations during a conflict, have to link these violations with structural violence. Truth commissions in their final reports which they present to the government have to uncover the continuums in violence by highlighting structural violence in pre-conflict society and to link this violence with conflict and post-conflict violations. This helps to identify the root causes of the human rights violations in conflicts and make comprehensive recommendations which can challenge the gendered hierarchies and gendered inequalities in the societies.

Transitional justice processes also include reparations which come from a state's responsibilities under international law. According to the International Law Commission

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<sup>40</sup> Ní Aoláin and Rooney (n 10) 340.

<sup>41</sup> Lambourne and Rodriguez Carreon (n 1) 80.

<sup>42</sup> Valji (n 34) 16.

(ILC), when and if a state breaches its international obligations under international law (by action or by omission), it has an obligation to provide reparations for the victims.<sup>43</sup> In addition to this, under international criminal law, perpetrators have individual responsibility to provide reparations for the victims of crimes against humanity, war crimes, genocide, and aggression.<sup>44</sup> So this means, under international law, that the right to a remedy through reparations has been established for post-conflict societies. More recently, international human rights law has created principles regarding reparations and has regulated this mechanism in far more detail.

In *Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* published in 2005, the UN defined the right to reparations and introduced its constituent elements as restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.<sup>45</sup> There is a growing debate in the literature regarding these reparations.<sup>46</sup> For instance, there is almost a consensus that in the current practice restitution would actually mean returning women to a society in which the pre-conflict structural inequalities and gendered hierarchies are prevalent since restitution requires restoring victims to their original situation.<sup>47</sup> However, when looking at the non-repetition element, it becomes clear that reparations can also challenge political and socio-economic discrimination in a society in order to prevent recurrence of the same violence against women.

As a response to this need, in 2007, with the *Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation*, a consensus appeared in an international meeting regarding the meaning of reparation:

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<sup>43</sup> International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001) <[http://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_6\\_2001.pdf](http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf)> accessed 3 October 2018, articles 28-33.

<sup>44</sup> UN General Assembly, Rome Statute of the International Criminal Court (July 1998) <<http://www.refworld.org/docid/3ac6b3a84.html>> accessed 3 October 2018, article 75.

<sup>45</sup> UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (21 March 2006) UN Doc A/RES/60/147, Annex, Preamble 5.

<sup>46</sup> See Walker (n 1); see also Fionnuala Ní Aoláin, Catherine O'Rourke and Aisling Swaine, 'Transforming Reparations for Conflict-Related Sexual Violence: Principles and Practice' (2015) 28 *Harvard Human Rights Journal* 97.

<sup>47</sup> Valji (n 34) 16.

“Reparation must go above and beyond the immediate reasons and consequences of the crimes and violations; they must aim to *address the political and structural inequalities that negatively shape women’s and girls’ lives*”.<sup>48</sup>

This often-quoted part of the declaration is of importance since it links the pre-conflict political and structural inequalities with women’s and girls’ post-conflict vulnerabilities. It shows that a desire emerged under international human rights law to address structural inequalities and the root causes of the conflicts through reparation mechanisms.

Another mechanism of transitional justice that has been subject to controversy is institutional reform. There is a connection between reparations and institutional reform. Although some scholars have claimed that guarantees of non-repetition as a reparation mechanism are not enough for women,<sup>49</sup> under the transformative justice approach, the guarantee of non-repetition is also one of the goals of institutional reform.<sup>50</sup> Both institutional reform and the non-repetition principle require prevention of a recurrence of the same human rights violations in the future. The forward-looking aspect of transitional justice becomes clear under the mechanism of institutional reform. It traditionally aims to transform, for instance, the security sector or the justice sector in a post-conflict society.<sup>51</sup> However, as Valji claimed, institutional reforms must go beyond a focus on the justice and security sectors in order to provide a gender-just process, for instance by repealing gender-discriminatory legislation or enacting special measures in the form of quotas.<sup>52</sup>

In order to become transformative, institutional reforms must address discriminatory structures in a post-conflict state.<sup>53</sup> Such an identification of discriminatory processes, as Lambourne and Rodriguez Carreon have argued, has a potential also to transform existing patriarchal structures which prevent an agency role for women.<sup>54</sup> This is in parallel with one of the aims of conflict transformation: to transform the relationships at the individual level.<sup>55</sup>

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<sup>48</sup> Nairobi Declaration on Women’s and Girls’ Right to a Remedy and Reparation (March 2007) <[https://www.fidh.org/IMG/pdf/NAIROBI\\_DECLARATIONeng.pdf](https://www.fidh.org/IMG/pdf/NAIROBI_DECLARATIONeng.pdf)> accessed 3 October 2018, part 3-H. (emphasis added).

<sup>49</sup> Valji (n 34) 16.

<sup>50</sup> Clara Sandoval, ‘Transitional Justice: Key Concepts, Processes and Challenges’ IDCR Briefing Paper (2010) <[http://repository.essex.ac.uk/4482/1/07\\_11.pdf](http://repository.essex.ac.uk/4482/1/07_11.pdf)> accessed 3 October 2018, 8.

<sup>51</sup> *ibid.*

<sup>52</sup> Valji (n 34) 20.

<sup>53</sup> Lambourne and Rodriguez Carreon (n 1) 82.

<sup>54</sup> Lambourne and Rodriguez Carreon (n 1) 83.

<sup>55</sup> John Paul Lederach, *The Little Book of Conflict Transformation* (Good Books 2003) 21.

Focusing on both structural inequalities and patriarchal hierarchies in a society would transform the roles of women at both societal level and inter-personal level.

This section has provided a critical reading of transitional justice processes. Borrowing the phrase from Fionnuala Ní Aoláin, ‘the reality gap’<sup>56</sup> in transitional justice theory and practice questions the transformative role of these mechanisms. The difference between theory and practice is particularly evident when women’s post-conflict situations and the legal frameworks are closely examined. Women’s extra-vulnerability in conflict and post-conflict situations is the consequence of the structural inequalities and gendered hierarchies in pre-conflict situations: so, these need to be addressed. Any transitional justice process needs to address these inequalities in order to transform the roles of women in a society. If they are re-structured with a transformative justice approach, transitional justice mechanisms (prosecutions, truth commissions, reparations and institutional reforms) do have the potential to challenge structural inequalities in a society. The traditionally strong focus on prosecutions and the backward-looking implementation of truth commissions, reparations mechanisms, and the comparatively under-emphasised mechanism of institutional reforms need to be remoulded. Theories of transformative justice and conflict transformation can be used as a base for re-designing these mechanisms for gender transformative justice. The next section provides an insight into how this can be achieved.

### **3. Conflict Transformation Theory: A Gendered Reading**

The last section has discussed the limitations of transitional justice mechanisms; this section suggests the theory of conflict transformation in response to these limitations. There is an established literature on this field. Bringing all the literature on the concept forward is beyond the scope of this section. Here, first, I limit the scope with the ideas of John Paul Lederach who is the founder of the theory. Second, I discuss the points where gender and conflict transformation intersect. Rather than a comprehensive analysis of the concept of conflict transformation, I address the question of why this theory offers more to women than conflict resolution theory does. I aim to find out what difference it makes to bring the language of ‘transformation’ for women. This section of the chapter is divided into two parts. In the first

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<sup>56</sup> Fionnuala Ní Aoláin, ‘Advancing Feminist Positioning in the Field of Transitional Justice’ (2012) 6 *International Journal of Transitional Justice* 205, 224.

part, I define the concept and outline its scope. In the second part, I discuss the connecting points between conflict transformation and gender transformative justice theory.

### **3.1. Defining the Concept of Conflict Transformation and Setting its Boundaries**

The concept was coined as a response to changes in the idea of security. After the Cold War, inter-state wars came to an end and intra-state conflicts with ethnic and nationalist aspects came to the fore. These conflicts resulted in severe damage to civilian populations<sup>57</sup> (although the meaning of ‘civilian’ is also blurred in these ‘new’ conflicts). State mechanisms including the judiciary, security forces, and legislative bodies are all affected by these conflicts. It is considered that one of the reasons for the emergence of these deep divisions in a society is a consequence of not being inclusive and responsive to the needs of the whole society in the first place.

‘End of a conflict’ started to mean a more inclusive and accountable state. Moreover, the actors in the conflicts have changed. In the Cold War era, conflict resolution practitioners were mediators and facilitators in peace processes. However, as a result of severe damage to the civilian population in intra-state conflicts, civilians became directly involved in the conflicts. One of the main pillars of the theory of conflict transformation became ‘grassroots leadership’.<sup>58</sup> The grassroots represent the base of a society which is in need of safety, shelter, and food.<sup>59</sup> The inclusion of the all segments of a society in the peace process became one of the requirements of conflict transformation theory.

John Paul Lederach introduced the concept of conflict transformation for the first time in the 1990s and contributed considerably to its development.<sup>60</sup> Conflict transformation can be defined as a process which aims at “the prevention or diminution of violence in all its forms,

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<sup>57</sup> Undine Kayser-Whande and Stephanie Schell-Faucon, ‘Transitional Justice and Conflict Transformation in Conversation’ (2010) 50 *Politorbis* 97, 99.

<sup>58</sup> John P. Lederach, *Building Peace: Sustainable Reconciliation in Divided Societies* (US Institute of Peace Press 1997) 39.

<sup>59</sup> *ibid* 42.

<sup>60</sup> See *ibid*; Lederach (n 55); John Paul Lederach, *Preparing for Peace: Conflict Transformation Across Cultures* (University Press Syracuse 1995); John Paul Lederach, *The Journey Towards Reconciliation* (Herald Press 1999); Cynthia Sampson and John Paul Lederach (eds), *From the Ground Up: Mennonite Contributions to International Peacebuilding* (OUP 2000); John Paul Lederach and Janice Moomaw Jenner (eds), *A Handbook of International Peacebuilding: Into the Eye of the Storm* (John Wiley and Sons 2002); John Paul Lederach, *The Moral Imagination: The Art and Soul of Building Peace* (OUP 2005); John Paul Lederach and Angela Jill Lederach, *When Blood and Bones Cry Out: Journeys through the Soundscape of Healing and Reconciliation* (OUP 2010).

direct, cultural and structural”.<sup>61</sup> As Kumar Rupesinghe claimed, ‘new’ dynamic and deep-rooted conflicts call for dynamic and sustained responses.<sup>62</sup> ‘Dynamic and sustained responses’ has two meanings. First, a dynamic and sustained process should be considered as getting away from the understanding of ‘negative peace’ which has been the main concern of conflict resolution processes. Conflict resolution practitioners have noticed that since they ignored structural inequalities and power imbalances in peace processes under the name of ‘impartiality’, the solutions brought were further marginalising the disadvantaged groups.<sup>63</sup> Conflict resolution restricted itself, *at least in practice*, to creating dialogues to end violence and to resolve the immediate, often symptomatic, problems.<sup>64</sup> The focus on the “surface symptoms”<sup>65</sup> did not respond to the structural inequalities and power asymmetries in post-conflict societies. So, conflict resolution has fallen short of providing a ‘dynamic and sustained’ peace process.

Second, a dynamic and sustained process means that the peace reconstruction process should last as long as it takes to address the deep structural causes of the conflicts. As Lederach emphasised, conflict resolution has been a more widely and better known term.<sup>66</sup> However, the term evolved to the point where it was considered a process which proposes ‘ending’ a conflict “without being sufficiently concerned with the deeper structural, cultural, and long-term relational aspects of conflict”.<sup>67</sup> Here, however, we need to note that there are different opinions regarding the nature and scope of conflict resolution.

Conflict resolution specialists have argued that conflict resolution theory goes beyond reaching an agreement only to satisfy the needs of the parties to the conflict, and it has also been proposed to make changes in the existing systems and in patterns of relations.<sup>68</sup> On this issue, the generalisability of much of the published research seems problematic. Rather than making generalisations in relation to the extent to which conflict resolution is intended to

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<sup>61</sup> Diana Francis, ‘Culture, Power Asymmetries and Gender in Conflict Transformation’ in Alex Austin *et al.* (eds), *Transforming Ethnopolitical Conflict: The Berghof Handbook* (Springer Fachmedien Wiesbaden 2004) pp 91-107, 97.

<sup>62</sup> Kumar Rupesinghe, ‘Introduction’ in Kumar Rupesinghe (ed.), *Conflict Transformation* (St. Martin’s Press 1995), viii.

<sup>63</sup> Kayser-Whande and Schell-Faucon (n 57) 99.

<sup>64</sup> *ibid.*

<sup>65</sup> *ibid* 100.

<sup>66</sup> John Paul Lederach, ‘Conflict Transformation in Protracted Internal Conflicts: The Case for a Comprehensive Framework’ in Kumar Rupesinghe (ed.), *Conflict Transformation* (St. Martin’s Press 1995), 201.

<sup>67</sup> *ibid.*

<sup>68</sup> See John Burton and Frank Dukes, *Conflict: Practices in Management, Settlement and Resolution* (St. Martin’s Press 1990).

address the root causes of the conflicts, here it can be concluded that the concept has been corrupted towards settlement approaches.<sup>69</sup> *In practice*, conflict resolution has been restricted to the “surface symptoms”.<sup>70</sup> A more comprehensive concept of conflict transformation has been developed after the Cold War era to deal with intra-state conflicts mainly by relying on the idea of the need for structural (social, economic, cultural and legal) changes in post-conflict societies.

Another main difference between the theories of conflict transformation and conflict resolution is with respect to the actors of the peacebuilding process. Who will be the actors in the process of conflict transformation and the subjects of social, economic, cultural, and legal changes during the peacebuilding process is more bottom-up under the theory of conflict transformation. Lederach holds the view that the peacebuilding process should encompass populations who have been affected by war-related violence and trauma.<sup>71</sup> This approach includes more people in the peacebuilding process than conflict resolution does. The linkage between ‘getting more affected by war’ and ‘being already marginalised before conflict’ has clearly been established in the literature on conflict transformation. Under this theory, as the most marginalised members of societies are disproportionately affected by wars, they should definitely be included in the transformation process.<sup>72</sup> Scholars in this field have evaluated these ‘most disadvantaged and marginalised groups’ from a feminist point of view and there is now a growing literature on women and their participation in the conflict transformation process.<sup>73</sup>

The peacebuilding process itself creates ‘winners and losers’ in the political, economic, social, and legal fields.<sup>74</sup> To provide transformation, “those whose interests would not be represented in ‘normal’ negotiations” must be a part of the transformation process.<sup>75</sup> Other than the specification of actors, there are many parallel ideas and intersection points between

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<sup>69</sup> Christopher Mitchell, ‘Beyond Resolution: What does Conflict Transformation Actually Transform?’ (2002) 9 *Peace and Conflict Studies* 1, 2.

<sup>70</sup> Kayser-Whande and Schell-Faucon (n 57) 100.

<sup>71</sup> Lederach (58) 60.

<sup>72</sup> Ann Jordan, ‘Women and Conflict Transformation: Influences, Roles, and Experiences’ (2003) 13 *Development in Practice* 239, 244.

<sup>73</sup> For example *see ibid*, Diana Francis, ‘Gender and Conflict Transformation’ Committee for Conflict Transformation Support Review no 23, February 2004 <<https://www.c-r.org/downloads/Review41.pdf>> accessed 3 October 2018, 4.

<sup>74</sup> Jochen Hippler, ‘Violent Conflicts, Conflict Prevention and Nation-Building – Terminology and Political Change’ in Jochen Hippler (ed.), *Nation-Building: A Key Concept for Peaceful Conflict Transformation* (Pluto Press 2004) 12.

<sup>75</sup> Mitchell (n 69) 9.



the gender-just transitional justice process and conflict transformation theory that can be identified. The next section analyses these intersection points.

### 3.2.A Gendered Reading of the Theory of Conflict Transformation

The aim of conflict transformation is to create a constructive change process.<sup>76</sup> What does this constructive change transform? First, the conflict itself is transformed into peace; second, the social and political systems which led to the conflict are transformed.<sup>77</sup> By this means, conflict transformation avoids superficial satisfaction and agreements.<sup>78</sup> As Hugh Miall suggested, conflict transformation is “a process of engaging with and transforming the relationships, interests, discourses (...), *the very constitution of society that supports the continuation of violence*”.<sup>79</sup> This goal of conflict transformation evaluates the concept of violence in different contexts. For instance, violence during times of conflict creates *personal, relational, structural,* and *cultural* patterns of violence.<sup>80</sup>

One possible implication of observing ‘the violence with different patterns’ is that how these patterns interact with each other can be realised. For instance, structural violence means that the root causes and social conditions that lead to violent actions<sup>81</sup> cannot be thought of as separate from the personal patterns of violence. Structural violence, social inequalities and widespread violence create physical and emotional violence among individuals (read as personal violence). In this way, similarly, as an accumulation of personal violence, cultural violence is created by triggering the rise of violent expressions within a cultural setting.<sup>82</sup> Taken together, a reasonable conclusion would be that the aim of conflict transformation is to address violence which occurs at different levels, from nation-wide to the individual level since all is considered to be connected. Until the interactions between these patterns of violence are established and solutions for these whole patterns are created, the conflict and violence are assumed to be *still continuing*.

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<sup>76</sup> Lederach (n 55) 14.

<sup>77</sup> Mitchell (n 69) 5.

<sup>78</sup> *ibid* 2.

<sup>79</sup> Hugh Miall, ‘Conflict Transformation: A Multi-Dimensional Task’ in Alex Austin *et al.* (eds), *Transforming Ethnopolitical Conflict: The Berghof Handbook* (Springer Fachmedien Wiesbaden 2004) pp 67-89, 70 (emphasis added).

<sup>80</sup> Lederach (n 55) 27.

<sup>81</sup> *ibid*.

<sup>82</sup> *ibid*.

Feminist scholars in the field of transitional justice have remarked how the end of a conflict, say a peace agreement or a ceasefire, does not bring a peace (read as the termination of physical violence) for women.<sup>83</sup> Similarly, feminist conflict transformation specialists have argued that a post-conflict state needs to consider the concept of ‘security’ in a broad sense to the extent that it includes violence against women in both during- and post-conflict situations.<sup>84</sup> This violence has been considered as a problem of the ‘power asymmetry’ in the societies concerned.<sup>85</sup> The social, economic, cultural, and physical oppression of women is a consequence of power asymmetry. Structural violence manifests itself as power imbalances or asymmetries between a man and a woman at the individual level.<sup>86</sup>

These imbalances or asymmetries are the results of political, economic, and social inequalities which have been rooted in a society from the perspective of conflict transformation theory. Since conflict transformation links different types of violence to each other, the theory is comprehensive enough to address and resolve the gendered root causes of wartime violence in post-conflict societies.<sup>87</sup> Conflict transformation contextualizes the violence by linking pre-, during- and post-conflict situations to each other. For instance, as Cilja Harders correctly suggested, wars are the products of social interaction, thus the structure that takes societies to war are also gendered.<sup>88</sup> Before a conflict, ‘manliness’ already depends on the use of violence often, but not necessarily, against women.<sup>89</sup> A peace process, according to the conflict transformation theory, should have a goal of addressing structural and root causes of violence in order to terminate violence against women in post-conflict societies. This goal also overlaps with the feminist ideas of the ‘continuum of violence’ and the need for ‘a gender-just peace process’.

The other intersection point for both conflict transformation theory and gender-just transitional justice literature is the need for cultural change in post-conflict societies. A

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<sup>83</sup> See Cynthia Cockburn, ‘The Continuum of Violence: A Gender Perspective on War and Peace’ in Wenona Giles and Jennifer Hyndman (eds), *Sites of Violence: Gender and Conflict Zones* (University of California Press 2004) pp 24-44; O’Rourke (n 9); Fionnuala Ní Aoláin, Dina Francesca Haynes, and Naomi Cahn, *On the Frontlines: Gender, War, and the Post-Conflict Process* (OUP 2011); Donna Pankhurst (ed.), *Gendered Peace: Women’s Struggles for Post-War Justice and Reconciliation* (Routledge 2008).

<sup>84</sup> Cilja Harders, ‘Gender Relations, Violence and Conflict Transformation’ in Beatrix Austin, Martina Fischer and Hans J. Giessmann (eds), *Advancing Conflict Transformation: The Berghof Handbook II* (Barbara Budrich Publishers 2011) pp 131-155, 134.

<sup>85</sup> Francis (n 61) 93.

<sup>86</sup> Dennis J. D. Sandole, *Peacebuilding: War and Conflict in the Modern World* (Polity 2010) 60.

<sup>87</sup> Harders (n 84) 147.

<sup>88</sup> *ibid* 135.

<sup>89</sup> *ibid* 135. For similar ideas, see Laura Sjoberg, *Gender, War, and Conflict* (Polity Press 2014).

culture of domination over women creates a culture of violence.<sup>90</sup> According to Johan Galtung, cultural violence itself “makes direct and structural violence look, even feel, right – or at least not wrong”.<sup>91</sup> A possible appearance of cultural violence in a society may be ‘the backlash’.<sup>92</sup> During conflicts, women generally gain access to new economic, familial, and social fields of action.<sup>93</sup> There is a growing literature illustrating the different roles that women take in times of conflicts.<sup>94</sup> In the aftermath of a conflict, going back to ‘normality’ is manifested by the restoration of the *status quo* in gender relations.<sup>95</sup> In post-conflict situations men seek ways to restore their power over family reproduction, the decision-making structures in the family, and socio-economic mechanisms.<sup>96</sup>

As the analysis above has shown, one of the main principles of conflict transformation theory is to bring the marginalised and disadvantaged groups forward. It is basically intended to eliminate all kinds of power asymmetries and dominations in a post-conflict society.<sup>97</sup> The main difference between conflict resolution and conflict transformation is that the latter is proposed on the idea of preventing a return to the former discriminatory situation.<sup>98</sup> Conflict transformation challenges the cultural violence rooted in a society, meaning that cultural patterns contribute to the rise of the violence in conflicts.<sup>99</sup> Similarly, feminist scholars consider the immediate aftermath of conflicts as an opportunity to consolidate positive changes which the conflict has triggered.<sup>100</sup> It has been the goal of feminist scholars in this field to challenge ‘the backlash’ and to address the culturally-rooted violence against women which prevents them from changing the roles given to them within the discriminatory cultural settings. Challenging cultural violence is the other intersection point of conflict transformation theorists and feminist transitional justice scholars.

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<sup>90</sup> Francis (n 61) 93.

<sup>91</sup> Johan Galtung, ‘Cultural Violence’ (1990) 27 *Journal of Peace Research* 291, 291.

<sup>92</sup> For a comprehensive analysis of ‘backlash’ see Donna Pankhurst, ‘Post-War Backlash Violence against Women: What can “Masculinity” Explain?’ in Donna Pankhurst (ed.), *Gendered Peace: Women’s Struggles for Post-War Justice and Reconciliation* (Routledge 2008) pp 293-320.

<sup>93</sup> Harders (n 84) 149.

<sup>94</sup> See Meredith Turshen and Clotilde Twagiramariya (eds), *What Women Do in Wartime: Gender and Conflict in Africa* (ZED Books 1998); Laura Sjoberg and Caron E. Gentry, *Mothers, Monsters, Whores: Women’s Violence in Global Politics* (ZED Books 2007); Sheila Meintjes, Anu Pillay and Meredith Turshen (eds), *The Aftermath: Women in Post-Conflict Transformation* (ZED Books 2001).

<sup>95</sup> Harders (n 84) 149.

<sup>96</sup> *ibid.* See also Francis (n 61) 101.

<sup>97</sup> Francis (n 61) 96.

<sup>98</sup> Harders (n 84) 149.

<sup>99</sup> Lederach (n 55) 27.

<sup>100</sup> Sunila Abeysekera, ‘Maximizing the Achievement of Women’s Human Rights in Conflict Transformation: The Case of Sri Lanka’ (2002-2003) 41 *Columbia Journal of Transnational Law* 523, 535.

A gendered reading of the theory of conflict transformation considers the theory of intersectionality within the scope of transitional justice. As Fionnuala Ní Aoláin and Eilish Rooney put forward, the application of the theory of intersectionality has been disregarded in post-conflict societies.<sup>101</sup> Having understood the disproportionate effects of conflicts on women, it has been figured out that within women as a group there are also specific vulnerable groups who can be affected by the conflicts more severely as a result of their (more) marginalised and subordinated status. Both conflict transformation and transformative justice points out the ‘need for justice mechanisms to address the structures and institutionalised inequalities that allow violence against women to persist’.<sup>102</sup> Intersectionality enables conflict transformation theory to address these structures and institutionalised inequalities more thoroughly by allowing it to look at how structural hierarchies and inequalities manifest themselves within women.

According to the report of UN Women, women tend to be less informed about both formal and traditional forms of justice mechanisms than men.<sup>103</sup> For instance in Colombia, reparations process required victims to fill a form and make a record of the offenses that have been committed by armed groups.<sup>104</sup> The level of illiteracy is relatively high within the displaced population, with even higher rates among displaced women.<sup>105</sup> Another example can be given from Burundi: the study demonstrated that for rural women domestic violence is an ongoing major concern “compounded by the extreme poverty and the ongoing effects of trauma from the genocidal violence that they had suffered in the past”.<sup>106</sup> The circumstances after the conflict have a potential to aggravate or mitigate the suffering of women.

Women from rural areas, with less literacy levels, with no ability to work, displaced, have lost their male breadwinners and abandoned by their families or communities as a result of sexual violence during the conflict have extra hardships during post-conflict processes. A transformative approach needs to take into account all these structural and intersectional

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<sup>101</sup> Ní Aoláin and Rooney (n 10) 338.

<sup>102</sup> Jelke Boesten and Polly Wilding, ‘Transformative Gender Justice: Setting an Agenda’ (2015) 51 *Women’s Studies International Forum* 75, 79.

<sup>103</sup> UN Women, A Global Study on the Implementation of United Nations Security Council Resolution 1325: Preventing Conflict, Transforming Justice, Securing the Peace, 2015, Chapter 5 <[https://www.peacewomen.org/sites/default/files/UNW-GLOBAL-STUDY-1325-2015%20\(1\).pdf](https://www.peacewomen.org/sites/default/files/UNW-GLOBAL-STUDY-1325-2015%20(1).pdf)> accessed 3 October 2018, 109.

<sup>104</sup> Ní Aoláin, O’Rourke, and Swaine (n 46) 137.

<sup>105</sup> *ibid.*

<sup>106</sup> Lambourne and Rodriguez Carreon (n 1) 84.

problems and connect them with the everyday vulnerabilities of women. Structural and everyday violence need to be connected and solutions should be created by considering how social and economic problems keep affecting the most marginalised and subordinated groups more than others. Structural violence can be connected to class, race and gender inequalities and also can be related to legal, political, and social rules and norms that limit women's demand for justice in patriarchal society settings.<sup>107</sup> Conflict transformation theory comprehends these problems in a broader context and creates a transformative justice theory which is broad enough to challenge all these intersectional inequalities and gendered hierarchies.

#### **4. Gender Transformative Justice Theory: Suggesting a Model**

Gender transformative justice can be defined as a multiple process which requires a transformation in the social, economic, cultural, and legal structures in a post-conflict society. By doing this, it provides a sustainable peace which has overcome the underlying causes of the conflict to prevent any possible recurrence in the future. Gready and Robins emphasised the local agency aspect of transformative justice in their own definition.<sup>108</sup> On the other side of the debate, Daly suggested that transformative justice is a process which is intended to achieve two main goals: reconciliation and deterrence.<sup>109</sup> Since the concept is newly-emerging, there are different definitions offered by each scholar in this field, and each transitional justice scholar emphasises one particular aspect of the concept more than the other aspects.

We can infer two conclusions from this variety of definitions. First, although the definitions and their emphases are different from each other, it is commonly assumed that the concept of conflict transformation has the potential to create a transformative justice theory since scholars already apply the terms in political science in order to have a definition of transformative justice. Second, previous studies have described the term using other terms which also require comprehensive definitions. My aim in this thesis is to vary from the other studies in this field by suggesting principles, which I derive from the field of conflict transformation, to evaluate the extent to which a transitional justice process has been gender

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<sup>107</sup> *ibid* 78.

<sup>108</sup> Gready and Robins (n 7) 349.

<sup>109</sup> Erin Daly, 'Transformative Justice: Charting a Path to Reconciliation' (2002) 12 *International Legal Perspectives* 73, 84.

transformative. The case study of the thesis, Bosnia-Herzegovina, is used to evaluate the theory in practice, as can be seen in Chapters 7 and 8.

Transformative justice does not aim to reject the whole theory of transitional justice. Instead, its goal is to “radically reform its [transitional justice’s] politics, locus and priorities”.<sup>110</sup> The mechanisms of transitional justice (trials, truth commissions, reparations, and institutional reforms) are also the mechanisms of transformative justice.<sup>111</sup> However, transformative justice goes beyond those mechanisms and does not restrict itself to legal frameworks. It is composed of a range of policies and approaches that can transform the social, political, and economic status of a large of stakeholders. The main ambition of transformative justice, in legal terms, is to ensure ‘non-repetition’ in a post-conflict society. To ensure non-repetition and to prevent women from being victims of violence in ‘post-conflict’ situations are the main goals of gender transformative justice. To achieve these goals, a model for gender transformative justice is suggested upon the engagement with the theories of conflict transformation and transformative justice. Now the section turns to look at the principles of this model.

#### 4.1.Continuum of Violence

In the commission of grave human rights violations in a society, the role of the public at large cannot be denied. The genocides in Rwanda and in Bosnia-Herzegovina illustrate the fact that such human rights violations take place with the involvement of public. One major drawback of the transitional justice approach has been that simply changing the laws in the society or bringing legal mechanisms are not capable of changing, with Daly’s words, “the culture that allowed the oppression”.<sup>112</sup> The word ‘transition’ suggests moving from one point to another, such as from oppressive regimes to liberation, from oligarchy to democracy, from lawlessness to due process, from injustice to justice.<sup>113</sup> The continuities of violence in different forms are considered irrelevant to the past violations, and as a result they are simply de-contextualised.

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<sup>110</sup> Paul Gready and Simon Robins, ‘From Transitional to Transformative Justice: A New Agenda for Practice’ (Centre for Applied Human Rights, University of York, Briefing Note TFJ-01 June 2014) <<http://www.simonrobins.com/Transformative%20Justice%20Briefing%20Paper.pdf>> accessed 3 October 2018, 1.

<sup>111</sup> Gready and Robins (n 7) 355.

<sup>112</sup> Daly (n 109) 74.

<sup>113</sup> *ibid.*

However, transformation requires moving from one place to another which brings a radical change in a society.<sup>114</sup> Transformation suggests a change in ‘the culture that allowed the oppression’. This provides two features of transformative justice. First, transformative justice gives a chance to address the continuities of violence by not drawing strict lines between conflict and post-conflict situations, but rather by providing long-term objectives such as elimination of culture of violence and intolerance. Second, focusing on the recreation of the culture allows a more bottom-up peace-building process. Transition is a process which happens at the top and “does not reach deep into the soil of the new society where the commitment to democratic values actually takes root”.<sup>115</sup> On the contrary, transformative justice aims to be engaged with grassroots to provide a long-term peace and a cultural change.<sup>116</sup>

The principle of continuum of violence is a significant objective that contextualises the ‘post-conflict’ violence against women. Elimination of dichotomies such as peace-war, conflict-post-conflict allows us to see the continuities of violence in the society which can only be eliminated through a change in the society structures which enabled the former oppression. Transformative justice is proposed to identify the continuities which can appear at lesser levels or in different framings, names, or contexts. One of the main criticisms against transitional justice processes is that the terms ‘conflict’ and ‘post-conflict’ make it difficult to see the continuum of violence in times of ‘peace’, and thus creates “false fissures in the capture of violent experiences”.<sup>117</sup> In their thorough concept note, Gready *et al.* put forward the relationship between structural violence and everyday violence. They argue that truth commissions, trials, tribunals, apologies, and reparations aim to address the wounds of conflicts, while everyday forms of violence deriving from the structural violence that led to the conflict remain unaddressed.<sup>118</sup>

Everyday violence might take different forms in different contexts. This violence, for instance, may include gang violence, drug trafficking or violence against particular groups in society based on gender, sexuality, race, ethnicity, religion and so on.<sup>119</sup> The major problem

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<sup>114</sup> *ibid.*

<sup>115</sup> *ibid.*

<sup>116</sup> Involvement of grassroots and the bottom-up approach are the main pillars of the theory of conflict transformation which constitutes the theoretical framework for transformative justice according to the main argument of present thesis. *See* Chapter 2.

<sup>117</sup> Ní Aoláin, O’Rourke, and Swaine (n 46) 105.

<sup>118</sup> Gready *et al.* (n 16) 2.

<sup>119</sup> *ibid.*

here is that everyday violence in ‘peacetime’ become normalised and removed from the political field to the criminal<sup>120</sup>, domestic or social spheres.<sup>121</sup> Thus, it is removed from the agenda of transitional justice and peace building and becomes a secondary issue. Sigsworth and Valji have pointed out that the continuing high level of violence against women in South Africa, decades after the transition to democracy, illustrates a number of inter-related factors which need to be addressed.<sup>122</sup> These factors, inter alia, are the former authoritarian government, the history of institutional and everyday violence of apartheid, militarised violence of conflict.<sup>123</sup> These factors cannot be considered as isolated from the everyday violence<sup>124</sup> that the most marginalised and the most vulnerable sections (including women) of the South African society are subjected to.

Ní Aoláin and Rooney are critical of the approach of transitional justice in terms of only focusing on “ending intra-male public violence (with an evident lack of regard for the continuance of ‘private’ sexualized violence)”.<sup>125</sup> A good example for such continuation can be given in case of Timor-Leste. The Timor-Leste Commission for Reception, Truth and Reconciliation (CAVR), which has been widely regarded one of the most successful truth commissions, reflected in its final report that forced displacement during the conflict “resulted in a range of harms affecting women, from starvation and exacerbated vulnerability to sexual abuse”.<sup>126</sup> The commission pointed out how public violence during the conflict keeps affecting the marginalised in domestic sphere in different framings, names or contexts.

‘Peace’ may not provide any physical security for particularly marginalised and subordinated groups in a post-conflict society.<sup>127</sup> Gender transformative justice aims to transform gender relations as a way of empowering the marginalised. In order to do this, recognising a continuum of violence becomes one of the main principles of transformative justice and

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<sup>120</sup> Anna Eriksson evaluates this problem in a broader perspective and concludes that surprisingly criminology has received little attention in the context of transitional societies although ‘(...) crime levels, particularly violent and organised crime, are often a serious and common consequence of sweeping social transformations (...)’. See Anna Eriksson, ‘A Bottom-Up Approach to Transformative Justice in Northern Ireland’ (2009) 3 *International Journal of Transitional Justice* 301, 305.

<sup>121</sup> Gready *et al.* (n 16) 2.

<sup>122</sup> Romi Sigsworth and Nahla Valji, ‘Continuities of Violence against Women and the Limitations of Transitional Justice: The Case of South Africa’ in Susanne Buckley-Zistel and Ruth Stanley (eds), *Gender in Transitional Justice* (Palgrave Macmillan 2012) pp 115-135, 121.

<sup>123</sup> *ibid.*

<sup>124</sup> *ibid.*

<sup>125</sup> Ní Aoláin and Rooney (n 10) 343.

<sup>126</sup> UN Women (n 103) 111.

<sup>127</sup> Boesten and Wilding (n 102) 75.



with this, elimination of violence against women is considered as a part of peacebuilding agenda under this theory.

## 4.2.Contextuality

Another main characteristic of transformative justice is contextuality. The term contextuality has come to be used to refer to the appropriateness of transitional justice mechanisms to the society at stake.<sup>128</sup> While former experiences across the world may create lessons learned or potential strategies, each society needs to structure its own transition considering its own culture and context.<sup>129</sup> One of the main criticisms regarding transitional justice mechanisms has been their approach of ‘one size fits all’. Transformative justice theory has been developed as a response to this problem. As Gready and Robins pointed out, “(t)he limits of localism in transitional justice appear to be set by approaches that prioritize institutional change and often instrumentalize local conflict resolution to serve national, state agendas”.<sup>130</sup> In order to provide a sustainable peacebuilding process, transformative justice suggests being context-dependent, led by local actors, and away from a purely normative approach by allowing the requests and priorities of the local.<sup>131</sup>

Eric Daly has been one of the most influential supporters of the idea of contextuality in transformative justice theory. Daly claims that each post-conflict country has “a unique constellation of social, historical, political, economic, ethnic, racial, religious, military, and other factors”.<sup>132</sup> All these factors, according to Daly, make each transition different from the others.<sup>133</sup> That is why each process has to develop their own local understanding for peace process and develop their own mechanisms to deal with the past. After claiming how different societies need different local mechanisms, Daly presents the case of South Africa as a transformative justice experience. In South Africa, the Parliament had unrestrained power to ‘legalise’ oppression,

“including racial registration laws, segregation laws, dispossession laws, removal laws, pass laws, suppression of expression and assembly laws,

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<sup>128</sup> Ellen Lutz, ‘Transitional Justice: Lessons Learned and the Road Ahead’ in Naomi Roth-Arriaza and Javier Mariezcurrena (eds), *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice* (CUP 2006) pp 325-341, 333.

<sup>129</sup> *ibid* 334.

<sup>130</sup> Gready and Robins (n 7) 349.

<sup>131</sup> *ibid* 344.

<sup>132</sup> Daly (n 109) 77.

<sup>133</sup> *ibid*.

detention laws, disenfranchisement laws, dis-employment laws, dis-education laws, anti-miscegenation laws, and anti-injunction laws”<sup>134</sup>

and so on. In South Africa the legal system made apartheid and the oppression of the black majority possible for the government of South Africa.<sup>135</sup> In such a situation, apartheid laws were the enablers of the structural violence; for justice first they needed to be disclosed.

South Africa’s Truth and Reconciliation Commission (TRC) has been considered successful for focusing on local understandings of peace.<sup>136</sup> South African society has a cultural concept called *ubuntu* which means, *inter alia*, respect for human dignity, empathy, and solidarity.<sup>137</sup> This concept enabled the survivors of gross human rights violations under the apartheid regime to come forward in the TRC and share their pain and thus gain their dignity back. The *Ubuntu* concept which includes in itself empathy, solidarity, and *Africanism* created the desire for reconciliation rather than retaliation in South African society and enabled the TRC to make the truth a prerequisite for amnesty. According to Daly, the transformational potential of South African process comes from the link between truth and amnesty;<sup>138</sup> and *ubuntu* as a shared concept enabled the TRC to give amnesty in return for the truth. This may not be possible in many other post-conflict societies since desire for reconciliation can be superseded by a desire for retribution.

Contextuality depends on both the local responses to the gross human rights violations and the nature of the crimes that requires the transitional justice mechanisms to adapt the most appropriate way to deal with these crimes. For instance, in Cambodia, there were a number of sexual violence and forced marriage incidents in conflict settings. Through a gender transformative justice approach, in this context the transition period would be expected to address these violations and create forward-looking solutions for such crimes. However, the Extraordinary Chambers in the Courts of Cambodia (the ECCC) missed the chance to

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<sup>134</sup> *ibid* 114.

<sup>135</sup> *ibid* 116.

<sup>136</sup> However, the TRC has also severely been criticised for only taking into consideration bodily harm (of which mostly men are the victims), meaning that civil and political rights, and as a result simply ignored women victims of apartheid who have been affected by structural violence, including socio-economic violations. For a comprehensive critical analysis of the South African TRC from a gender perspective see Fiona C. Ross, *Bearing Witness: Women and the Truth and Reconciliation Commission in South Africa* (Pluto 2003).

<sup>137</sup> For a comprehensive analysis on the concept of *ubuntu*, see Richard A. Wilson, ‘The Sizwe will not Go Away: The Truth and Reconciliation Commission, Human Rights and Nation-Building in South Africa’ (1996) 55 *African Studies* 1.

<sup>138</sup> Daly (n 109) 122.

subject sexual violence, including within a forced marriage, to public scrutiny.<sup>139</sup> Types of the crimes in each and every conflict situation offer different ‘opportunities’ to integrate these violations into the transitional justice mechanisms in a transformative way and to provide victims with both backward-looking (such as reparations) and forward-looking (such as adoption of new laws) measures.

#### **4.3. Going beyond Civil and Political Rights-based Justice and Exploring the Other Pillars of Justice**

The theory of transformative justice in parallel with the theory of conflict transformation places an emphasis on the need to address economic and social rights.<sup>140</sup> In particular, from a gender point of view, it is a widely held view that women suffer economic and social rights violations in the aftermath of conflicts as a result of poverty, marginalisation, and gendered hierarchies in the society. Feminist scholars welcome the idea of transformative justice since it enables women to illustrate the continuum of violence in the forms of socio-economic inequalities. The question is whether in purporting to deal with structural violence transformative justice addresses violations of economic and social rights. It is important to question here what exactly transformative justice aims to address in order to deal with ‘structural violence’. This section examines the relationship between structural violence and violations of economic and social rights.

Prioritization of economic and social rights in the field of conflict transformation suggests that armed conflicts occur as a result of many “factors that include inequality, poverty, exclusion and marginalization, as well as a broader absence or weakening of social cohesion in a society”.<sup>141</sup> When these inequalities align with cultural, ethnic or religious identities, there occurs a risk of an armed conflict.<sup>142</sup> A gendered reading of the theory of conflict transformation goes beyond cultural, ethnic or religious identities and examines gender as a category since the theory of conflict transformation aims to resolve the conflicts at both an *interpersonal* and a *structural* level.<sup>143</sup> The concept of interpersonal level of violence in the theory

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<sup>139</sup> Sarah Williams and Emma Palmer, ‘Transformative Reparations for Women and Girls at the Extraordinary Chambers in the Courts of Cambodia’ (2016) 10 *International Journal of Transitional Justice* 311, 327.

<sup>140</sup> Paul Gready and Simon Robins, ‘From Transitional to Transformative Justice: A New Agenda for Practice’ (Centre for Applied Human Rights, University of York, Briefing Note TFJ-01 June 2014) <<http://www.simonrobins.com/Transformative%20Justice%20Briefing%20Paper.pdf>> accessed 3 October 2018, 3.

<sup>141</sup> Gready and Robins (n 7) 347.

<sup>142</sup> *ibid.*

<sup>143</sup> Lederach (n 55) 21.

of conflict transformation gives space to feminist scholars to carry previously ‘domestic issues’ to the political sphere.

Many scholars hold the view that conflict related violence affects the most marginalised and subordinated groups in societies the most.<sup>144</sup> Being a member of these groups brings additional sufferings when they are rejected by families and communities,<sup>145</sup> such as denial of land and property rights for the victims of wartime sexual violence. Other than the structural problems that sexual violence causes, other loopholes in the law may also result in the violation of women’s economic and social rights. For example, during the peacebuilding process in Lebanon, the enforced disappearances during the civil war (1975-1990) were not considered to be issues that should be dealt with as a part of transitional justice process. The failure to address these disappearances created structural problems for women such as accessing their husband’s bank accounts, obtaining identity documents for their children, claiming inheritance and so on.<sup>146</sup> Taken together, these examples suggest that structural violence and economic and social rights violations are closely related.

The literature regarding the inclusion of remedies for the violations of economic and social rights into transitional justice mechanisms in peacebuilding process is divided around two different views regarding economic and social rights. On the one hand, scholars claim the significance of economic and social rights for a (transformative) transition process.<sup>147</sup> Other scholars mention the hardships of inclusion of remedies for the violations of economic and social rights into such short-lived transitional justice mechanisms.<sup>148</sup> Both views are discussed here and, it is argued that an analysis of the nature of economic and social rights leads us to conclude that they must be addressed in the scope of transitional justice.

Lambourne and Rodriguez Carreon developed a theory of transformative justice from a gender point of view by scrutinising the question of what a gender transformative approach to transitional justice would look like. They concluded that such an approach needs to

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<sup>144</sup> Ní Aoláin, O’Rourke and Swaine (n 46) 99.

<sup>145</sup> *ibid* 99.

<sup>146</sup> UN Women (n 103) 110.

<sup>147</sup> See Gready and Robins (n 7); Matthew Evans, ‘Structural Violence, Socioeconomic Rights, and Transformative Justice’ (2016) 15 *Journal of Human Rights* 1; Matthew Evans, *Transformative Justice: Remedying Human Rights Violations beyond Transition* (Routledge 2018); Daniela Lai, ‘Transitional Justice and Its Discontents: Socioeconomic Justice in Bosnia and Herzegovina and the Limits of International Intervention’ (2016) 10 *Journal of Intervention and Statebuilding* 361. See also Paul Gready and Simon Robins (eds), *From Transitional to Transformative Justice* (CUP 2019).

<sup>148</sup> See Waldorf (n 2).

transform all psycho-social, political, and *socioeconomic* power relations to affect women's roles in the society in a transformative way.<sup>149</sup> To challenge the pre-existing socioeconomic structures of the societies, economic and social rights have been considered “as a springboard”<sup>150</sup> in post-conflict reconstruction. The literature has long tended to regard remedying violations of economic and social rights as the same as challenging structural violence. Although this tendency has merits to certain extent, there are also crucial risks of aligning these two categories strictly with each other.

The risks of alignment are exemplified in the work undertaken by Evelyn Schmid and Aoife Nolan in their intriguing article.<sup>151</sup> Their main argument in the article is that if the two are aligned, the distinction between economic and social rights and broader socioeconomic issues becomes lost.<sup>152</sup> This can lead to remedies for economic and social rights violations as understood as only addressing the root causes of the conflicts and challenging structural violence.<sup>153</sup> This misconception has been challenged by Schmid and Nolan on different grounds. For instance, they argued that economic and social rights do not necessarily have to be violated before a conflict; they may be violated during the conflict too.<sup>154</sup> They also challenge Lars Waldorf on the basis of the length of the remedying socioeconomic violations. Waldorf mentions the practical difficulties of addressing economic and social rights in a transitional justice context by claiming that “remedying of socio-economic injustices is a long-term political project”.<sup>155</sup> Schmid and Nolan challenges this view by giving an example of how civil and political rights may also need long-term solutions, such as in a hypothetical case of a discrete instance of an extrajudicial execution by a state official.<sup>156</sup> Therefore, when ‘length of the remedying’ is considered as a legitimate ‘excuse’ not to address human rights violations, both economic and social rights and also civil and political rights might remain unaddressed.

For the purpose of the present thesis, it is problematic to present the remedies for the violations of economic and social rights as a cure for the root causes of the conflicts and

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<sup>149</sup> Lambourne and Rodriguez Carreon (n 1) 71.

<sup>150</sup> Louise Arbour, ‘Economic and Social Justice for Societies in Transition’ (2007) 40 *International Law and Politics* 1, 26.

<sup>151</sup> Evelyn Schmid and Aoife Nolan, “Do No Harm”? Exploring the Scope of Economic and Social Rights in Transitional Justice’ (2014) 27 *International Journal of Transitional Justice* 1.

<sup>152</sup> *ibid* 3.

<sup>153</sup> *ibid* 10.

<sup>154</sup> *ibid* 11.

<sup>155</sup> Waldorf (n 2) 179.

<sup>156</sup> Schmid and Nolan (n 151) 13.

structural violence; this may increase the expectations from economic and social rights. When economic and social rights do not solve the problems, they may be given less credit again. Or, considering economic and social rights as ‘background issues’ may prioritise civil and political rights violations in transitional justice context and make economic and social rights secondary issues<sup>157</sup> that can be dealt with ‘later’.

Transformative justice is a reasonable approach to tackle this issue. Transformative justice, on the contrary to transitional justice, takes a comprehensive and holistic view regarding indivisibility and interdependence of all human rights. It is not restricted to short term actions since it aims to deal with structural causes of the conflicts to provide a sustainable long-term peace. Therefore, economic and social rights violations are required to be addressed within the scope of the theory of transformative justice.

## 5. Conclusion

This chapter has engaged with the parallel discussions in both the legal and political science fields in order to illustrate how these discussions could feed into each other for the development of a theory of gender transformative justice. As Lambourne underlined, transitional justice scholars aim to promote human rights and the rule of law without situating these concepts in a peacebuilding context.<sup>158</sup> Such a precedent fails to observe the close links between peace, reconciliation, and justice. The main concern of the chapter has been to draw attention to the similar discussions in the transitional justice and conflict resolution literatures. The criticisms of these two concepts raise from the similar problems. Although the theoretical framework of conflict transformation has been established in the field of political science as a response to the failures of conflict resolution, in the legal field a desire for transformative justice is newly emerging. The chapter has argued that conflict transformation provides legal scholars with an elaborate theoretical framework which should be adapted to the legal field.

Lederach’s conflict transformation theory is ‘gender-neutral’, but it suggests that the marginalised, including women, should be the main actors of the peacebuilding processes. This chapter built on this in order to theorise how this can be done. The ways in which violence, peace, and conflict concepts are comprehended under the theory of conflict

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<sup>157</sup> *ibid* 15.

<sup>158</sup> Lambourne (n 1) 19.

transformation give an opportunity to challenge the ‘gender-neutral’ and narrow interpretations of these concepts. According to Lederach, post-conflict situations should be the periods to address the root causes of the violence.<sup>159</sup> Such an approach can enable the practitioners to question the ways in which violence against women occurs in a conflict situation. Such questioning can provide a gender transformative approach which aims to address the vulnerabilities of women dating back to pre-conflict.

By engaging with the theory of conflict transformation through a gender lens, this chapter has suggested a theoretical model for gender transformative justice. The principles of the model are suggested as: *continuum of violence; contextuality; different pillars of justice; addressing the root causes of the violence*. The first three principles are discussed in this chapter. The fourth and the final one is discussed in the following chapter by engaging with the feminist theories which also pays significant attention to the root causes of violence against women in conflicts.

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<sup>159</sup> See Lederach (n 55).

### CHAPTER 3: ADDRESSING THE ROOT CAUSES OF WARTIME VIOLENCE AGAINST WOMEN: UNDERLYING CONNECTIONS BETWEEN FEMINIST THEORY AND GENDER TRANSFORMATIVE JUSTICE

#### 1. Introduction

In the previous chapter, I examined the gender-centred critique of transitional justice. Feminist scholars contributed to the criticism from an important point of view: in order to address wartime violence against women, the cause needs to be understood. Many scholars based their critique on their empirical research.<sup>1</sup> Empirical research helps to see exactly how the gender-neutral justice mechanisms failed to address wartime violence against women. It has been an interesting experience to observe that there exists a great amount of transgressions between feminist ideas on wartime violence against women and transformative justice. Feminist theorists approach violence against women (mainly wartime rape) from a broader perspective. They, basically, reveal the connections between ‘peacetime’ violence against women and wartime violence against women. Exploring the linkages between ‘peacetime’ and wartime rapes enable them to go beyond short-term solutions, and to address the structural causes of wartime violence against women which most of the time date back to pre-conflict.

Feminist scholars in transitional justice have explored the continuities in the violence against women,<sup>2</sup> but this has been limited to continuities between during- and post-conflict violence against women. The linkages in violence against women between pre-conflict and during-conflict is still poorly addressed in the transitional justice literature. The aim of this chapter is to further our knowledge on the ‘continuum of violence’ by bringing forward feminist theorists’ wide contribution on this issue. Our knowledge of the continuum of violence within the borders of transitional justice literature is largely shaped by a very limited perspective. With this in mind, I aim to engage with feminist approaches on wartime violence against women in order to broaden my understanding of the root causes of violence against women in conflicts.

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<sup>1</sup> See Ruth Rubio-Marin (ed.), *The Gender of Reparations: Unsettling Sexual Hierarchies While Redressing Human Rights Violations* (CUP 2009); Ruth Rubio-Marin (ed.), *What Happened to the Women? Gender and Reparations for Human Rights Violations* (ICTJ 2008).

<sup>2</sup> See Cynthia Cockburn, ‘The Continuum of Violence: A Gender Perspective on War and Peace’ in Wenona Giles and Jennifer Hyndman (eds), *Sites of Violence: Gender and Conflict Zones* (University of California Press 2004) pp 24-44.



This chapter consists of two main sections. In section 2, I engage with the feminist literature on wartime violence against women, mainly rape. The causes of wartime rape have long been the concern of feminist scholars. Feminist scholars did not observe the ‘war-zones’ as extraordinary or extremely different spaces and periods when they compare them with ‘peace-zones’, although there are exceptions.<sup>3</sup> They believe that the idea of rape and consequences of wartime rape are constructed way before the wars start. Section 2 presents these arguments and creates a space where I argue that feminist approaches to violence against women in wars requires the adoption of gender transformative justice as an approach. This is because feminist approaches on wartime violence against women, like conflict transformation and transformative justice theories, aim to search for the causes of the violence during conflict in the pre-conflict time-zone. Both feminist and transformative justice theories argue that without analysing the pre-conflict situation and without addressing structural/root causes of the violence, a ‘peace’ does not seem possible (for women in our case). Both of them aim to transform the pre-conflict hierarchy settings and aim to create a ‘peacetime’ which is completely different from pre-conflict.

In section 3, I look at the individual causes of the wartime violence against women in the case of Bosnia and Herzegovina. Although feminist approaches claim that there are connections between ‘peacetime’ and wartime rapes, this does not mean that ‘rape is universal, so is wartime rape’. Susan Brownmiller in her seminal book *Against Our Will* argued that wartime rape is universal.<sup>4</sup> However, many other feminists, such as Elisabeth Jean Wood,<sup>5</sup> opposed strictly this idea and defended the need to analyse each and every case in its own context by bringing forward different warzones where rape did not happen at all. Wood, like many other scholars who are discussed in section 3, argues that wartime rape cannot be taken for granted in every conflict. Rather than making generalisations, the specific socio-cultural contexts which lead to wartime rapes should be examined.

The aim of section 3 is to examine the specific vulnerabilities of Bosnian women before the war. This section asks: What were the individual circumstances of pre-conflict Bosnia and Herzegovina which made women here more vulnerable to wartime rape than any other

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<sup>3</sup> For an exception, see, Susan Brownmiller, *Against Our Will: Men, Women and Rape* (Ballantine Books 1975).

<sup>4</sup> See *ibid.*

<sup>5</sup> Elisabeth Jean Wood, ‘Sexual Violence during War: Explaining Variation’ (Order, Conflict and Violence conference, Yale University, April-May 2004) <<https://www.prio.org/Global/upload/CSCW/Violence%20in%20civil%20war/wood%20sexual%20violence%20paper%20may%202004.pdf>> accessed 3 October 2018, 1.

conflict-zone? What was the context that led wartime rape to be one of the main weapons in this war? I argue that the meanings attached to ‘manhood’ and ‘womanhood’ before the war meant the rape was considered to be an efficient weapon of war in the Bosnian context. At the end of the section, I emphasise that, similar to what feminist approaches emphasise, contextuality is also one of the main criteria of gender transformative justice.<sup>6</sup> As distinct from transitional justice, rather than providing the same mechanisms for all post-conflict states, transformative justice theorists recommend case-specific solutions which are based on the individual circumstances of each post-conflict state.<sup>7</sup> On this point, I conclude that feminist approaches and gender transformative justice theory have much in common; for a gender-just peacebuilding process, gender transformative justice theory needs to be adopted.

## **2. Explaining Violence against Women in Wartime: Wider Perspectives by Feminist Theorists**

This section engages with multiple feminist approaches regarding wartime violence against women. By doing this, the causes of wartime violence will be analysed. I argue that we need to amend transitional justice theory and practice in order for it to engage more with feminist perspectives on violence against women. An engagement between transitional justice and feminist approaches can lead to the creation of differently designed transitional justice mechanisms. This is because feminist theories look at rapes during war by connecting them with pre-conflict gendered hierarchies in societies. As a result of this connection, masculinity, patriarchy, domination, gender and power relations become the issues that should be targeted according to feminist theorists, although transitional justice mechanisms barely touch these problems which are at the core of continuities in the violence against women. I conclude by suggesting and taking a gender transformative justice approach. By looking at the structural causes of the wars and violations, and by creating linkages between the violence in pre-, during and post-conflict circumstances, I argue that gender transformative justice is promising in terms of providing a gender-just peace process.

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<sup>6</sup> Erin Daly, ‘Transformative Justice: Charting a Path to Reconciliation’ (2002) 12 *International Legal Perspectives* 73. See also Chapters 2 and 7.

<sup>7</sup> *ibid* in general.

Regarding the use of the word 'rape', feminist theorists use different expressions to make their point. For instance, genocidal rape<sup>8</sup> is used to emphasise the connections and relativities between genocide and rape. Or, mass rape<sup>9</sup> is used to refer to the prevalence of the rape during a specific conflict. I prefer to use wartime rape in order to be more inclusive and I prefer not to engage with theoretical and terminological discussions of the use of the terms in this section. This term enables me to include all rapes during the Bosnian war even if they are perpetrated by women's own ethnic members (opportunistic rape)<sup>10</sup> rather than restricting myself to 'genocidal rape' which, I argue, recreates the misconception that 'only Serbians committed rapes during the war'.<sup>11</sup>

The causes of wartime rape have long been a concern of feminist scholars. They severely criticised the previous explanations for wartime rape which were based on biological imperatives and sexual passion. Wartime rapes can be considered similar to 'peacetime' rapes, since both are "motivated by the desire of a man to exert dominance over a woman".<sup>12</sup> As Jonathan Gottschall stated, the 'pressure cooker' theory, which "suggests that war rapists are the victims of irresistible biological imperatives and that the chaos of the wartime milieu encourages men to vent their urges to terrible effect", is a misconception.<sup>13</sup> The only 'pressure' that builds is not libidinal, but misogynistic.<sup>14</sup> Along similar lines, Carolyn Nordstrom has noted that the sexual gratification explanation cannot explain the reason why rapes are most of the time in wars conducted in public, "usually family and community members are forced to watch under threat of death".<sup>15</sup>

Causes of wartime rape can be explained by bringing forward the issues of patriarchy, misogyny, masculinity and gender hierarchies. By referring to these concepts in the explanation of wartime rape, feminist literature pointed out that wartime rape is neither extraordinary nor extremely different from 'peacetime' rape. Rhonda Copelon was among

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<sup>8</sup> See Beverly Allen, *Rape Warfare: The Hidden Genocide in Bosnia-Herzegovina and Croatia* (University of Minnesota Press 1996).

<sup>9</sup> See Alexandra Stiglmayer (ed.), *Mass Rape: The War against Women in Bosnia-Herzegovina* (University of Nebraska Press 1994).

<sup>10</sup> See Kelly Dawn Askin, *War Crimes Against Women: Prosecution in International War Crimes Tribunals* (Kluwer Law International 1997) 288.

<sup>11</sup> For a relevant discussion about this, see Doris E. Buss, 'Rethinking 'Rape as a Weapon of War' (2009) 17 *Feminist Legal Studies* 145.

<sup>12</sup> Jonathan Gottschall, 'Explaining Wartime Rape' (2004) 41 *Journal of Sex Research* 129, 130.

<sup>13</sup> *ibid.*

<sup>14</sup> *ibid.*

<sup>15</sup> Carolyn Nordstrom, 'Rape: Politics and Theory in War and Peace' (1996) 11 *Australian Feminist Studies* 147, 152.

the ones that clearly and very strictly suggested the link between ‘peacetime’ and wartime rapes.<sup>16</sup> According to Copelon, rape, traditionally, has been perceived and thus “condemned as a violation of a man’s honour and exclusive right to sexual possession of his woman/property, and not because it is an assault on a woman”.<sup>17</sup> This perception does not change in conflict settings. The patriarchal dimension of rape, as Copelon called it, remains the same. In conflicts, in intending to humiliate and emasculate the enemy (men) for failing to protect ‘their’ women is the patriarchal dimension of wartime rape.<sup>18</sup>

Dorothy Thomas and Regan Ralph also proposed that in ‘peacetime’, “mischaracterization of rape as a crime against honour and not as a crime against the physical integrity of the victim” plays a role in the failure to denounce and prosecute wartime rape.<sup>19</sup> This misconception they highlight can be directly seen in the laws regarding rape. International law is not an exception. Under international law, wartime rape has been codified in IV Geneva Convention of 1949 as a ‘crime against honour’ instead of against the individual victim.<sup>20</sup> Such an understanding equated ‘women’s honour’ with virginity or chastity.<sup>21</sup> Codification of wartime rape under crimes against women’s honour reinforces the social view that the raped women are dishonourable.<sup>22</sup> Such characterisation of wartime rape cannot be explained without comprehending the deeply embedded understandings of rape in societies which are shaped during ‘peacetimes’.

Wartime rape does not occur because men are the only enemies and the targets. Although wartime rapes might aim to humiliate and destroy men by raping ‘their’ women (objectification of women)<sup>23</sup>, women can be targeted as the main enemies too. In her seminal work, Ximena Bunster-Buratto questions the reasons behind the mass rape of women political prisoners under oppressive regimes in Southern Cone of Latin America.<sup>24</sup> Bunster-

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<sup>16</sup> Rhonda Copelon, ‘Gendered War Crimes: Reconceptualizing Rape in time of War’ in Julie Peters and Andrea Wolper (eds), *Women’s Rights, Human Rights: International Feminist Perspectives* (Routledge 1995) pp 197-214, 200.

<sup>17</sup> *ibid.*

<sup>18</sup> *ibid* 201.

<sup>19</sup> Dorothy Thomas and Regan Ralph, ‘Rape in War: Challenging the Tradition of Impunity’ (1994) 14 *SAIS Review* 81, 92.

<sup>20</sup> “Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.” IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, Article 27, second paragraph.

<sup>21</sup> Copelon (n 16) 201.

<sup>22</sup> *ibid.*

<sup>23</sup> *ibid* 206.

<sup>24</sup> Ximena Bunster-Buratto, ‘Surviving beyond Fear: Women and torture in Latin America’ in June Nash and Helen Safa (eds), *Women and Change in Latin America* (Bergin and Garvey Publishers 1985) pp 297-325, 307.

Burotto points out that rape here was a controlling mechanism over the women who “have dared to take control of their own lives by struggling against an oppressive regime”; the essential idea behind the rape was to send these politically active women back to their homes for them to “fulfill the traditional role of wife and mother”.<sup>25</sup> According to feminist scholars, wartime rape can directly target women, for exactly the same reasons as ‘peacetime’ rape: reinforcing dominance over women and sending ‘threatening’ women back to their traditional roles. That is why wartime rape has been considered as the reinforcement of ‘male power’ over female bodies.<sup>26</sup>

Another point which connects peacetime and wartime rape is the military culture in societies. Nordstrom conducted interviews with military personnel and stated that soldiers told her that they are taught to view rape as an acceptable war tactic.<sup>27</sup> Basing on her empirical data, Nordstrom concludes that military personnel are taught that “rape constitutes far more than a physical attack against a single individual” and thus it is definitely a “consciously constructed strategy”.<sup>28</sup> Rather than the explanation of Brownmiller on this point, I concur with the explanation of Nordstrom. Brownmiller argues that “(w)ar provides men with the perfect psychologic backdrop to give vent to their contempt for women”.<sup>29</sup> Brownmiller takes for granted the hatred against women within men that war exposes. However, this does not explain the following issues: the absence of wartime rape in some conflicts, sexual violence against men and boys in many wars, and the unwillingness of some soldiers to rape in wars.

Nordstrom clarifies the attacks in wartime by linking them to the military culture that grows up during ‘peacetimes’ before conflicts. Nordstrom asks, “(...) at the end of a war, are higher levels of violence entrenched in the institutions and interpersonal relationships than existed before the war occurred?” Such questioning overlaps with the approach of gender transformative justice approach too: violence during and after the conflict should be questioned as being totally ‘new’ and independent from the pre-conflict. Nordstrom’s point, which I concur, is that, such violence, in our case wartime rape, cannot be isolated from what the military’s pre-conflict understanding of rape is.

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<sup>25</sup> *ibid.*

<sup>26</sup> Ruth Seifert, ‘The Second Front: The Logic of Sexual Violence in Wars’ (1996) 19 *Women’s Studies International Forum* 35, 41.

<sup>27</sup> Nordstrom (n 15) 154.

<sup>28</sup> *ibid.*

<sup>29</sup> Brownmiller (n 3) 32.

Military culture creates stereotypes in ‘peacetime’ very strongly. Maria Eriksson Baaz and Maria Stern observed that the ‘feminine’ is stereotypically associated with a need for protection while masculinity is characterised as ‘protecting, warring, and killing’ in the armed forces.<sup>30</sup> This conceptualisation starts in ‘peacetime’ by the elimination of all ‘feminine’ elements from the military. The stereotypes, that armed forces training reinforces, date back to ‘peacetime’. Cynthia Enloe concisely connects this military culture existing in ‘peacetime’ with wartime violence against women:

“*if* military strategists (...) imagine that women provide the backbone of the enemy’s culture, *if* they define women chiefly as breeders, *if* they define women as men’s property and as the symbols of men’s honor, *if* they imagine that residential communities rely on women’s work – *if* any or all these beliefs about society’s proper gendered division of labor are held by war-waging policy makers – they will be tempted to devise an overall military operation that includes their male soldiers’ sexual assault of women.”<sup>31</sup>

Constructions of femininity and masculinity date back to pre-conflict and are reinforced by armed forces in conflicts for the very reasons quoted from Enloe. These feed into the structural reasons for wartime rape.

In her analysis of her fieldwork data, Nordstrom points out that construction of terror in war is carried out “by deconstructing culture *in the most basic, and base, of ways*”.<sup>32</sup> The strategies during the war are based on the destruction of ‘assets’ which are most valued in that specific cultural context. Therefore, the impact of the destruction becomes disruptive. Wartime rape is exactly situated and evaluated in this scope by feminist scholars. Leslie Lebowitz and Susan Roth suggested that the meaning attached to wartime rape comes from “the broader sociocultural context”.<sup>33</sup> In their interviews with ‘peacetime’ rape survivors, Lebowitz and Roth observed that many women make reference to this sociocultural context i.e. the ideas, beliefs, and metaphors which are products of their cultural settings in order to express what

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<sup>30</sup> Maria Eriksson Baaz and Maria Stern, ‘Why do Soldiers Rape? Masculinity, Violence, and Sexuality in the Armed Forces in the Congo (DRC)’ (2009) 53 *International Studies Quarterly* 495, 499.

<sup>31</sup> Cynthia Enloe, *Maneuvers: The International Politics of Militarizing Women’s Lives* (University of California Press 2000) 134.

<sup>32</sup> Carolyn Nordstrom, ‘Women and War: Observations from the Field’ (1991) 9 *Minerva* 1, 6 (emphasis added).

<sup>33</sup> Leslie Lebowitz and Susan Roth, “‘I Felt like a Slut’: The Cultural Context and Women’s Response to Being Raped’ (1994) 7 *Journal of Traumatic Stress* 363, 364.

they have experienced.<sup>34</sup> Women survivors make sense of these experiences with the ideas that had been constructed within this sociocultural context. They refer to the loss of their 'chastity', 'virginity' and whatever they are taught as valuable in order to express their suffering.<sup>35</sup> In the wars, then, deconstruction of culture and a nation is carried out in the most basic ways by targeting the shared values.<sup>36</sup>

On similar lines, Maria B. Olujic in her article identifies how the metaphors and acts of rape are transformed from peacetime to wartime and argues that violence against women in wars cannot be understood "without first examining its cultural meanings in peace, meanings that utilize metaphors of the body, sexuality and honor to manipulate the social order".<sup>37</sup> Terrorisation of women is carried out with the ideas that they value or, actually, they are taught to value in 'peacetime'. Women are basically targeted because their bodies 'represent' the culture, and the culture 'resides' in their bodies.<sup>38</sup> Bunster-Burotto named this 'double brutalisation', meaning "socializing women in particular modes and then using that very socialization as a method of torture" in wartime.<sup>39</sup> That is why, according to Annemiek Richters, violence against women in wartime is not surprising, since peacetime is already a predictive factor for it.<sup>40</sup> Construction of the 'honourable' woman and attaching values to women in a specific society are the predictive factors (which derive during 'peacetime') for the way violence against women will be carried out in wars. Therefore, 'double brutalisation' occurs with the interaction of gender and culture.<sup>41</sup>

The main question is whether 'peacetime' rape can be relevant and explanatory for wartime rape. As underlined above, the humiliation of women via rape during wars occurs as a result

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<sup>34</sup> *ibid* 366.

<sup>35</sup> *ibid* 372.

<sup>36</sup> In this regard, see Nira Yuval-Davis, 'Gender and Nation' (1993) 16 *Ethnic and Racial Studies* 621; Nira Yuval-Davis and Floya Anthias (eds), *Woman-Nation-State* (Macmillan 1989); Nira Yuval-Davis, *Gender and Nation* (Sage Publications 1997); Joane Nagel, 'Masculinity and Nationalism: Gender and Sexuality in the Making of Nations' (1998) 21 *Ethnic and Racial Studies* 242; Maja Korac, 'Ethnic-Nationalism, Wars and the Patterns of Social, Political and Sexual Violence against Women: The Case of post-Yugoslav Countries' (1998) 5 *Identities* 153; Julie Mostov, 'Sexing the Nation/Desexing the Body: Politics of National Identity in the former Yugoslavia' in Tamar Mayer (ed.), *Gender Ironies of Nationalism: Sexing the Nation* (Routledge 2000) pp 89-110.

<sup>37</sup> Maria B. Olujic, 'Embodiment of Terror: Gendered Violence in Peacetime and Wartime in Croatia and Bosnia-Herzegovina' (1998) 12 *Medical Anthropology Quarterly* 31, 31.

<sup>38</sup> Sondra Hale, 'Rape as a Marker and Eraser of Difference: Darfur and the Nuba Mountains' in Laura Sjoborg and Sandra Via (eds), *Gender, War, and Militarism: Feminist Perspectives* (Praeger 2010) pp 105-113, 111.

<sup>39</sup> Bunster-Burotto (n 24) 299.

<sup>40</sup> Annemiek Richters, 'Gender Violence, Health and Healing in Situations of Ethno-National Conflicts: The Cases of the Former Yugoslavia and Tajikistan' in Fenneke Reysoo (ed.), *Hommes Armes, Femmes Aguerries, Rapports de Genre en Situations de Conflit Arme* (Collection Yvonne Preiswerk 2001) pp 137-168, 144.

<sup>41</sup> Diana Milillo, 'Rape as a Tactic of War: Social and Psychological Perspectives' (2006) 21 *Journal of Women and Social Work* 196, 202.

of socialisation of women in peacetime in a particular way. Socialisation of men and construction of the 'honourable' woman in peacetime in a particular direction aggravates the trauma, pain, and suffering of women who survive wartime rape. The perception of wartime rape and consequences of it reach to pre-conflict, 'peacetime' periods. Then, transitional justice processes are required to be responsive to women's needs and problems by acknowledging the links between 'peacetime' and wartime periods. Without addressing and identifying these issues, a transitional justice process offers nothing which transforms the roles of women. Sending women back to the social settings where they are already given subordinated and dominated roles does not provide gender justice. For the purpose of this thesis, 'pre-conflict' and conflict zones carry a continuum. Everyday violence against women is a predictive or "risk factor"<sup>42</sup> for the way of violence against women occurs in wars. 'Peacetime' violence and wartime violence against women are not exactly the same in character, though. Now, I look at this issue in more detail below by discussing the different arguments on this topic.

Annemiek Richters traces the differences between 'peacetime' and wartime rapes by listing them: the motivation for rape; the execution of the rape; the consummation of the rape by the offender; the consequences of the rape for the victim.<sup>43</sup> However, Richters does not evaluate these rapes as totally different. Richters highlights that despite the substantial differences, "in all situations rape involves domination".<sup>44</sup> Copelon agrees with Richters from a different perspective. Copelon draws a distinction between 'peacetime' and wartime rape by stating that war intensifies the brutality, repetition, public aspect, and the likelihood of rape.<sup>45</sup> However, Copelon still finds direct links between wartime rape and different types of 'peacetime' rapes: gang rape in 'peacetime', for instance, according to Copelon, shares the repetitive, public aspect of wartime rape.<sup>46</sup> Or, marital rape is also repetitive, brutal, and exacerbated by a profound betrayal of trust, and may force women to flee their home and community.<sup>47</sup> Both Richters and Copelon agree that wartime rape is also about dominance like 'peacetime' rape, thus, wartime rape is not an exception or extraordinary in terms of 'male domination'.

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<sup>42</sup> *ibid* and Richters (n 40) 144.

<sup>43</sup> Annemiek Richters, 'Sexual Violence in Wartime: Psycho-Sociocultural Wounds and Healing Processes: The Example of the Former Yugoslavia' in P. J. Bracken and Celia Petty (eds), *Rethinking the Trauma of War* (Free Associations Books 1998) pp 112-127, 116.

<sup>44</sup> *ibid* 112.

<sup>45</sup> Copelon (n 16) 207.

<sup>46</sup> *ibid*.

<sup>47</sup> *ibid*.



Catharine MacKinnon seems more cautious on equalization of 'peacetime' and wartime rape for different reasons. MacKinnon underlines that equalization of both blurs the distinction between aggressors and aggressed.<sup>48</sup> This means that evaluation of wartime rapes in Bosnia and Herzegovina as male aggression neglects the genocidal aspect of the rapes. According to MacKinnon, wartime rapes in Bosnia and Herzegovina cannot be "grasped either as a strategy in genocide or as a practice of misogyny", because the reasons of those rapes are *both* genocide *and* misogyny.<sup>49</sup> While MacKinnon considers wartime rape in Bosnia and Herzegovina "as the fact of male aggression against women",<sup>50</sup> her point is that it was a war context and this cannot be ignored and equalised with 'peacetime' in total.

MacKinnon's point has been severely criticised by Nordstrom for recreating a 'hierarchy of rapes'.<sup>51</sup> Nordstrom critically asks the question: "If 30,000 people are raped in the war in the Balkans, and 30,000 are raped in Australia, or Brazil, or any other 'peacetime' location – can we really say the first is worse than the second?"<sup>52</sup> Liz Kelly shares the same views with Nordstrom, and claims that the distinction between 'everyday/everynight' rape and wartime rape ignores the symbolic meanings of all rapes.<sup>53</sup> In order not to create a 'hierarchy of rapes' and not to normalise the 'peacetime' rape, both Nordstrom and Kelly do not differentiate 'peacetime' and wartime rapes and observe a close link between them. Apparently, they aim not only to challenge the 'hierarchy of rapes' but also to target the 'public-private' distinction regarding rape.

As far as I observed, even if feminist scholars differentiate 'peacetime' and wartime rape on different grounds, there seems to be an agreement that structural causes of both of the rapes are the same. For instance, Nicola Henry argued that structural causes of wartime rape connect 'everyday' forms of violence in pre-conflict and post-conflict contexts with 'extraordinary' forms of violence during conflicts.<sup>54</sup> As Evan Hague claimed, "(p)ower and

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<sup>48</sup> Catharine MacKinnon, 'Crimes of War, Crimes of Peace' in Stephen Shute and Susan Hurley (eds), *On Human Rights: The Oxford Amnesty Lectures 1993* (Basic Books 1993) pp 83-109, 88.

<sup>49</sup> *ibid.*

<sup>50</sup> *ibid* 87.

<sup>51</sup> Nordstrom (n 15) 156.

<sup>52</sup> *ibid* 155.

<sup>53</sup> Liz Kelly, 'The Everyday/Everynightness of Rape: Is it Different in War' in Laura Sjoberg and Sandra Via (eds), *Gender, War, and Militarism: Feminist Perspectives* (Praeger 2010) pp 114-123, 117.

<sup>54</sup> Nicola Henry, 'Theorizing Wartime Rape: Deconstructing Gender, Sexuality, and Violence' (2016) 30 *Gender and Society* 44, 52.

domination are central structure of rape”.<sup>55</sup> The rapist, no matter in ‘peacetime’ or wartime, owns the power-holding position and emasculates the ‘powerless’ gendered ‘feminine’ identities.<sup>56</sup> Since wars are often fought with the reason of domination, wartime rape becomes a means for further domination (via subordinating /emasculating) of the enemy.<sup>57</sup> The idea of (wartime or peacetime) rape being an issue of political power<sup>58</sup> and a means for feminization of the ‘victim’ also explains sexual violence against men and boys during wars.

Similar to how women make sense out of being raped socially and culturally constructed,<sup>59</sup> rape of men and boys is also given meaning in sociocultural contexts. By analysing wartime rape from the perspective of gender and power relations not only connects ‘peacetime’ and wartime rape but also sheds light on this understudied issue of wartime rape of men and boys. As Beverly Allen underlines, “attributes of masculinity always adhere to the perpetrator, whether that person is male or female”<sup>60</sup> while “attributes of femininity always adhere to the victim, whether female or male”.<sup>61</sup> That is why, in many cultures, “having a penis and also being penetrated by it both feminizes and homosexualizes the penetrated man and *him only*”.<sup>62</sup> Wartime rape of men and boys also supports the feminist arguments that rape is a tool for domination and subjugation, no matter in ‘peacetime’ or wartime.

Can we observe any *direct links*, other than structural reasons which are discussed above, between violence against women before the war and violence against women during the war? Baaz and Stern trace the direct connections between pre-conflict and conflict times by asking the question of whether sexual violence *similarly* occurred before the armed conflict in the Democratic Republic of Congo (the DRC).<sup>63</sup> They correctly argued that in addition to understanding the structural patterns between ‘peacetime’ and wartime rapes in general, it is also of importance to look at the local patterns of violence against women in ‘peacetime’ in that specific context.<sup>64</sup> Their questioning enabled them to detect that reporting of rape cases

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<sup>55</sup> Evan Hague, ‘Rape, Power, and Masculinity: The Construction of Gender and National Identities in the War in Bosnia-Herzegovina’ in Ronit Lentin (ed.), *Gender and Catastrophe* (ZED Books 1997) pp 50-63, 54.

<sup>56</sup> *ibid.*

<sup>57</sup> Claudia Card, ‘Rape as a Weapon of War’ (1996) 11 *Hypatia* 5, 13.

<sup>58</sup> Roland Littlewood, ‘Military Rape’ (1997) 13 *Anthropology Today* 7, 9.

<sup>59</sup> Lebowitz and Roth (n 33) 382.

<sup>60</sup> Allen (n 8) 27.

<sup>61</sup> *ibid* 28.

<sup>62</sup> Dubravka Zarkov, *The Body of War: Media, Ethnicity, and Gender in the Break-Up of Yugoslavia* (Duke University Press 2007) 165 (emphasis added).

<sup>63</sup> Baaz and Stern (n 30) 502.

<sup>64</sup> *ibid.*

was very low before the war in the DRC.<sup>65</sup> They found that before the war, most rape cases never reached the courts.<sup>66</sup> Although pre-conflict violence cannot be directly connected with the mass rape of women during the war in the DRC, it gives an insight into the consequences of wartime violence against women: impunity.

Another feminist scholar who *directly* linked pre-conflict violence against women with wartime violence against women is MacKinnon. The data obtained by MacKinnon suggests that “Yugoslavia’s pornography market was the freest in the world”.<sup>67</sup> MacKinnon proposed that the male population in the former Yugoslavia was already conditioned and mobilized before the war to enjoy the atrocities they would commit during the war.<sup>68</sup> This sparked a debate among feminists. Not everyone welcomed MacKinnon’s argument. Vesna Kesić was an editor of a Croatian magazine *Start*, who was severely criticised by MacKinnon for writing for pornographic magazines.<sup>69</sup> During the war, Kesić became one of the ‘witches’ and national traitors “for not being ‘patriotic enough’ in (her) understanding of the deep roots of war and war rapes”.<sup>70</sup> Kesić severely criticised MacKinnon’s point too. She argued that the existence of such actions during the war cannot be denied. She added, however, that pornography cannot be the primary reason for the rape of women in the Bosnian war.<sup>71</sup> Although Kesić agrees that pornography is “an indivisible part of the dominant male military culture, unbalanced power structure and patriarchal misogyny of war”, she concludes that pornography *alone* cannot explain “the origins, deep roots, and complexity of the brutality” of the wartime rape.<sup>72</sup>

My observation on this discussion is that, although MacKinnon considers pornography as a reason for wartime rape in the Bosnian war, it is not the *only* reason for this. For instance, in another work, by looking at the specific case of Bosnia and Herzegovina, MacKinnon draws a distinction between the generic characteristics and particular characteristics of wartime rapes<sup>73</sup> (named above as structural and individual characteristics). MacKinnon locates

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<sup>65</sup> *ibid.*

<sup>66</sup> *ibid* 503.

<sup>67</sup> Catharine MacKinnon, ‘Turning Rape into Pornography: Postmodern Genocide’ in Alexandra Stiglmayer (ed.), *Mass Rape: The War against Women in Bosnia-Herzegovina* (University of Nebraska Press 1992) pp 73-81, 77.

<sup>68</sup> MacKinnon (n 48) 108.

<sup>69</sup> MacKinnon (n 67) 77-78.

<sup>70</sup> Vesna Kesić, ‘A Response to Catharine MacKinnon’s Article “Turning Rape into Pornography: Postmodern Genocide” (1994) 5 *Hastings Women’s Law Journal* 267, 273.

<sup>71</sup> *ibid* 269.

<sup>72</sup> *ibid* 271.

<sup>73</sup> MacKinnon (n 48) 89.

pornography within the context of degradation and humiliation of women. As discussed above, she clearly points out the causes of wartime rape as *both* genocide *and* misogyny.<sup>74</sup> Pornography should be considered as one of, among others, concrete reflections of misogyny. This is actually what Kesić argues. Kesić, similar to MacKinnon, blames “patriarchal misogyny and pornography as well as male egoism and disregard” as reasons for these violations.<sup>75</sup> That is why I observe partially similar arguments on both sides.

In addition to MacKinnon and Kesić, Nordstrom also questions the direct links and continuums between pre-conflict and conflict-related violence against women. Nordstrom identifies the ‘significant amount of pornography’ as a way or means of legitimisation of rape.<sup>76</sup> However, Nordstrom goes beyond the explanation of pornography and refers to the legal regulations, media, literary, entertainment industries in our societies which create “a culture of rape”.<sup>77</sup> The direct link between ‘peacetime’ and wartime rape is found by Nordstrom on the very legitimisation process of rape in everyday life.

In my opinion, causes and motivations of wartime rape should be considered on the basis of each conflict state. A similar approach to this conclusion has been proposed by Megan Gerecke. Gerecke criticises feminist theorists for deriving their conclusions on the theory of wartime violence from one single case and then generalising these conclusions for all other cases without testing their applicability.<sup>78</sup> Although I defend the necessity of addressing structural causes of wartime rape, I also acknowledge the specificities and variations of each case. By taking a transformative justice approach, I would suggest looking at the causes of wartime rape on an individual basis.

The analysis of individual cases links ‘peacetime’ and wartime violence against women more clearly and correctly. As MacKinnon reported, in the Bosnian context, during the war, military prisons’ walls were covered with pornographic pictures,<sup>79</sup> and “tanks were plastered with pornography”.<sup>80</sup> As MacKinnon suggested, there is a link between wartime rape and saturation of pornography in the former Yugoslavia “especially after the fall of

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<sup>74</sup> *ibid* 88.

<sup>75</sup> Kesić (n 70) 280.

<sup>76</sup> Nordstrom (n 15) 155.

<sup>77</sup> *ibid*.

<sup>78</sup> Megan Gerecke, ‘Explaining Sexual Violence in Conflict Situations’ in Laura Sjoberg and Sandra Via (eds), *Gender, War, and Militarism: Feminist Perspectives* (Praeger 2010) pp 138-154, 138.

<sup>79</sup> MacKinnon (n 67) 78.

<sup>80</sup> *ibid* 76.

communism”.<sup>81</sup> These findings in the Bosnian context are individual causes of the wartime rape and should not be generalised for each and every conflict where there is wartime rape. Individual motivations for wartime rape matter. Although patriarchy, misogyny, militarism and masculinity can be the structural reasons for wartime rape, the way they appear in everyday life may differ from one country to another.

Although feminist scholars find the continuums between ‘peacetime’ and wartime rape on structural grounds, they tend to pay attention to the individual circumstances of the conflicts as well. Feminist literature, according to Inger Skjelsbæk, found that women are targeted with sexual violence for two essential reasons: First, they are “targeted because they are women who find themselves in a situation where patriarchal gender relations are accentuated”.<sup>82</sup> Secondly, women are targeted in that specific conflict because they are female embodiments of socio-cultural identities.<sup>83</sup> Skjelsbæk concludes that, although all women are equally prone to sexual violence because of their gender in wartime, ‘certain groups of women’ are more targeted than others because of socio-cultural structures.<sup>84</sup>

Having agreed with this observation of Skjelsbæk, the chapter turns to the specific/individual reasons of wartime rape in the Bosnian context. Although peacetime and wartime violence against women share structural characteristics, the specificities of each conflict should not be overlooked. Gender transformative justice theory places importance on the contextuality. To provide long-term and gender-sensitive legal solutions, the structural causes of the violations during wartime should be addressed according to both transformative justice and conflict transformation theories. Without addressing patriarchal structures, masculinity, militarism (like transitional justice theory and practice does), it is not possible to provide a gender-just peacebuilding process. Neglect of these structural causes of wartime rape would send women back to the societies where they will experience violence on a daily basis (in the ‘private’ sphere).

In addition to the structural causes of wartime violence, specific/individual reasons also should be targeted. Transformative justice claims that legal responses to each conflict society

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<sup>81</sup> *ibid* 77.

<sup>82</sup> Inger Skjelsbæk, ‘Sexual Violence and War: Mapping Out a Complex Relationship’ (2001) 7 *European Journal of International Relations* 211, 223.

<sup>83</sup> *ibid*. See also Yuval-Davis (n 36).

<sup>84</sup> *ibid*.

should be based on their specific circumstances.<sup>85</sup> It criticises transitional justice for offering the same mechanisms as solutions to different contexts without taking into consideration the specific circumstances and reasons of the violence occurred there. Feminist approaches are in agreement with transformative justice on this point. They also argue that situational differences should be recognised “without losing sight of commonalities”.<sup>86</sup> Basing on this point, now I turn to the specific vulnerabilities of women in the Bosnian war context. What were the reasons that made wartime/mass rape possible as a weapon of war in this war? What were the main vulnerabilities of women in this context? Why was wartime rape used and why was it this effective? In order to address these issues, it is necessary to analyse the links between pre-conflict and conflict-time violence against women which has been poorly understood and addressed in the transitional justice literature. That is why the peace process fell short of creating gender-just legal responses for these women.

### **3. Investigating the Root Causes of the Wartime Violence Against Women in Bosnia and Herzegovina**

This section challenges the idea of ‘universality of wartime rape’. Some scholars argued that “there is nothing unprecedented about mass rape in war”.<sup>87</sup> Such an approach considers war as a space which reveals the hatred of men against women. This view, Madeline Morris stated, “may in fact hide more than it reveals”.<sup>88</sup> Generalisations prevent us from seeing the ‘unprecedented’ issue which occurred in the war in Bosnia and Herzegovina. This section argues that the understanding of gender cannot be separated from how the war is fought in Bosnia and Herzegovina.<sup>89</sup> The society structures are at the core of the way the violence against women occurred and the way it is *perceived* by the victims and by the wider society.

In order to explain the causes of wartime rape, first, pre-conflict power and gender relations should be understood. As stated by Olujic, wartime rapes in the former Yugoslav countries would not be such an effective weapon during the war “if it were not for concepts of honor, shame, and sexuality that are attached to women’s bodies in peacetime”.<sup>90</sup> These ideas and

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<sup>85</sup> See Chapter 2.

<sup>86</sup> Copelon (n 16) 208.

<sup>87</sup> Susan Brownmiller, ‘Making Female Bodies the Battlefield’ in Alexandra Stiglmayer (ed.), *Mass Rape: The War against Women in Bosnia-Herzegovina* (University of Nebraska Press 1992) pp 180-182, 181.

<sup>88</sup> Madeline Morris, ‘In War and Peace: Rape, War, and Military Culture’ in Anne Llewellyn Barstow (ed.), *War’s Dirty Secret: Rape, Prostitution, and Other Crimes against Women* (Pilgrim Press 2000) pp 167-203, 168.

<sup>89</sup> Hague (n 55) 59.

<sup>90</sup> Olujic (n 37) 31-32.

beliefs are directly translated into warfare as a war tactic. As a result of the rapes, men suffered “the shame of their failure to protect *their property which includes women*, family, bloodlines, and soil”.<sup>91</sup> As Skjelsbæk suggests, wartime intensifies the pre-existing gender relations so that “if women are perceived as men’s possession in times of peace, they will be perceived as such even more so in times of war”.<sup>92</sup> The vulnerability of Bosnian women to wartime rape can be explained by this way of socialisation of women in ‘peacetime’: while an attack on a woman represents an attack against her community, this brings along men’s inability to protect their dependents,<sup>93</sup> in the case of Bosnia and Herzegovina.

To make sense of the link between ‘peacetime’ and wartime violence against women, it is important to analyse the predictive factors of wartime rape. As reported by Richters, “despite the obvious and widely publicized progress in many spheres of women’s lives” in the former Yugoslavia, the circumstances were much more complicated.<sup>94</sup> The construction of female bodies was at the core of the ethnic-based debates.<sup>95</sup> Dubravka Zarkov, in her groundbreaking book, brings to our attention the similarities and the links between the ethnic war and the media war, which started long before the ethnic war.<sup>96</sup> Having admitted the difference of ‘actual violence’ between them, Zarkov argues that “femininity and masculinity, and norms of sexuality and definitions of ethnicity, create links between the media war and the ethnic war”.<sup>97</sup> Zarkov focuses on the time period after 1987. In 1987, Kosovo,<sup>98</sup> by claiming independence, marked the start of the former Yugoslavia’s disintegration. Zarkov identified the beginning of ‘media war’ with this event. In line with her, this section focuses on the late 1980s: after that nationalist ideas and parties became prominent, and they shaped and more correctly sharpened gender relations in the society.

Ethnic rivalries and nationalist disintegration policies, not accidentally, coincide with the time when rape threats and rape crisis occurred in the region. Named by Silva Mežnarić, the ‘rape

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<sup>91</sup> *ibid* 39 (emphasis added).

<sup>92</sup> Skjelsbæk (n 82) 217.

<sup>93</sup> Gerecke (n 78) 148.

<sup>94</sup> Richters (n 40) 152.

<sup>95</sup> Zarkov (n 62) 2.

<sup>96</sup> *ibid* 7.

<sup>97</sup> *ibid*.

<sup>98</sup> Kosovo was an autonomous province in the former Yugoslavia. Within Kosovo, Albanians comprised the majority of the population.

crisis' peaked in 1988, and the Serbian press consistently blamed the Albanians as 'rapists'.<sup>99</sup> The discourse of rape was constructed as 'Albanians were raping Serbian women'. Rape became both 'a threat' and 'threatening'. The purpose of this discourse was to "establish control over the interaction and communication between 'targeted' actors among the ethnic groups".<sup>100</sup> Targeted actors were Albanian men as perpetrators and Serbian women as victims of the 'rapes'.

Rape discourse became a political tool which sharpened the ethnic hatred and intensified the gender roles in the region. These rape claims led the Republic of Serbia to modify its penal code, by "introducing in 1986 a criminal offense of 'sexual assault of citizens of different nationality'".<sup>101</sup> Previously, the penal code treated all citizens equally regardless of their nationality. However, with this change, having a different nationality became an aggravating element for the perpetrator.<sup>102</sup> Rape became a political tool in the region to which all ethnicities attached the same meaning. Women bodies were politically constructed in a national context before the war.<sup>103</sup>

The meaning of rape (and the goal of the wartime rape) was something shared by three ethnicities in the region. Borrowing Todd Salzman's words,

“(t)he very practice of rape and impregnation as a form of genocide depends not only upon the perpetrators buying into the genetic and cultural myth but the victims, their families, and their communities accepting the myth as well.”<sup>104</sup>

Beverly Allen is the one who first brought this idea of 'genetic myth' forward. Allen argued that enforced pregnancy as a method of genocide can only makes sense if we ignore genetics.<sup>105</sup> Why did the region ignore all about genetics? What were the 'more truthful' beliefs that enabled them to believe in the idea that a baby inherits her father's genetics and

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<sup>99</sup> Silva Mežnarić, 'Gender as an Ethno-Marker: Rape, War, and Identity Politics in the Former Yugoslavia' in Valentine M. Moghadam (ed.), *Identity Politics and Women: Cultural Reassertions and Feminisms in International Perspective* (Westview Press 1994) pp 76-97, 83.

<sup>100</sup> *ibid* 79.

<sup>101</sup> *ibid* 86.

<sup>102</sup> *ibid* 87.

<sup>103</sup> Seifert (n 26).

<sup>104</sup> Todd Salzman, "Rape Camps", Forced Impregnation, and Ethnic Cleansing: Religious, Cultural, and Ethnical Responses to Rape Victims in the former Yugoslavia' in Anne Llewellyn Barstow (ed.), *War's Dirty Secret: Rape, Prostitution, and Other Crimes against Women* (Pilgrim Press 2000) pp 63-92, 79.

<sup>105</sup> Allen (n 8) 87.



acquires father's ethnicity? How could all perpetrators and also victims and their families believe in this idea? This was only possible, as Allen emphasised, when "they cancel every aspect of the mother's identity - her national, 'ethnic', religious, and even genetic identities".<sup>106</sup>

The children born of a Serbian father were assumed to be a Serbian, even though, "the Serb father will have no part in the child's upbringing and Serb culture will provide no context for the child's acculturation".<sup>107</sup> The main slogan used by the Serb soldiers against women raped was "You will give birth to a chetnik soldier".<sup>108</sup> According to Allen, this was what was 'new' about mass rape in Bosnia and Herzegovina, which Brownmiller overlooks. When Brownmiller claims that "there is nothing unprecedented about mass rape in war",<sup>109</sup> according to Allen, Brownmiller misses the point: "*pregnancies*, and not the rapes alone, are a major weapon of the genocide".<sup>110</sup> Sondra Hale confirms this point by saying that "genocidal rape" is aimed to destroy and attack the "ethnic purity of the 'other' through forced pregnancy".<sup>111</sup> Therefore, the rape both identifies and highlights but at the same time destroys the otherness of the victim via pregnancies.<sup>112</sup>

But, how was this possible? How is this (il)logic taken for granted by three ethnicities, namely Croats, Serbs and Bosniaks, in the region? What would this reveal about 'peacetime' gender relations in the former Yugoslavia? All three ethnicities considered women as "sexual containers"<sup>113</sup> or "little more than vessels for childbearing".<sup>114</sup> The foundations of this idea can be found in 'peacetime'. As stated by Zarkov, during the 'media war', women were called to raise children for the nation in each ethnic society.<sup>115</sup> The main 'duty' and function of women were shaped by this discourse: giving birth for the sake of their ethnic groups. Along similar lines, Olujic argues that before the ethnic war, the rape fear was created in the society and the worst fears of women became being raped by other ethnic groups' members.<sup>116</sup> Women became inferior and the ones to be protected in both 'peacetime' and wartime,

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<sup>106</sup> *ibid* xiii.

<sup>107</sup> *ibid* 139.

<sup>108</sup> Mežnarić (n 99) 77.

<sup>109</sup> Brownmiller (n 87).

<sup>110</sup> Allen (n 8) 90.

<sup>111</sup> Hale (n 38) 112.

<sup>112</sup> *ibid*.

<sup>113</sup> Allen (n 8) 97.

<sup>114</sup> Copelon (n 16) 206.

<sup>115</sup> Zarkov (n 62) 4.

<sup>116</sup> Olujic (n 37) 45.

because they have reproductive ability which directly makes them vulnerable ‘sexual containers’.

Salzman points out here that the logic behind the ‘genocidal rape’<sup>117</sup> i.e. that the “male determines the child’s ethnic identity” was cross-cultural.<sup>118</sup> If the victims received acceptance by their communities and/or the children of rape were welcomed, “a link in the chain of genocide” would be removed.<sup>119</sup> Similarly, if the concepts of honour, shame, and sexuality were not attached to the bodies of women all over the region, wartime rape would not have been such an effective weapon of war in the former Yugoslavia.<sup>120</sup> The construction of the ideas on honour, shame, and sexuality over women bodies dates back before the war. In ‘peacetime’, men set a high value on women’s chastity, monogamy, and fertility in the region.<sup>121</sup> This makes women primary targets in wars in order to deconstruct culture “in the most basic, and base, of ways”.<sup>122</sup>

Looking at both structural and individual causes of the wartime rape sheds light on our understanding of the root causes of violence against women in a way that transitional justice scholars have not done. To provide a gender-just transitional justice process, transitional justice scholars should engage with feminist approaches more. Although recently there has been an increasing amount of work on gender inclusion in transitional justice, I have observed that feminist theorists’ ideas are poorly transformed to the legal field of transitional justice. One of the consequences of this is that feminist transitional justice literature has been limited to identifying the connections between violence in conflict and post-conflict societies. However, feminist theorists tracked the roots of wartime violence against women in pre-conflict zones. This enabled them to address the reasons for structural violence (as patriarchy, masculinity, militarism) which cover the conflict and post-conflict periods.

In this thesis it is suggested that truth commissions can be effective tools to address the root causes of the violence against women. Although this issue has been dealt in more detail in Chapter 5, here it should be underlined that root causes of violence against women can be addressed by a truth commission. Truth commissions ‘allow for a true

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<sup>117</sup> Allen (n 8) in general.

<sup>118</sup> Salzman (n 104) 78.

<sup>119</sup> *ibid* 80.

<sup>120</sup> Richters (n 40) 156.

<sup>121</sup> *ibid*.

<sup>122</sup> Nordstrom (n 32) 6.

understanding of the deep structural and institutional causes of past abuse.<sup>123</sup> While trials bring forward an individual agency, truth commissions combine human rights investigation with a historical narrative that gives insight into the underlying reasons and patterns of human rights abuse.<sup>124</sup> Trials focus on the effects of violence and miss the chance to question the causes of violence. It is not in the scope of this thesis to discuss whether trials have a capacity and responsibility to question the causes of human rights abuse. However, from gender transformative justice perspective, this thesis argues that trials fail to situate individual human rights violations of women in wartimes ‘within a broader narrative that could help the nation understand the ideological and structural causes of past violence, including the complex ways they continue to manifest in the present.’<sup>125</sup>

The ICTY was criticized by the survivors for little inclusion of survivor testimonies and local communities in the justice and truth-seeking process.<sup>126</sup> With an inclusion of small number of cases, and thus a very restricted number of victims and witnesses, the ICTY failed to ‘create a broader, more comprehensive “macro” narrative.’<sup>127</sup> The truth that the ICTY provided remained narrow ‘rather than one that is reflective of the broader causes, context and consequences of conflict and wider patterns of involvement and complicity in violence.’<sup>128</sup>

As discussed in this thesis,<sup>129</sup> in order to address wartime violence against women, the root causes of it needs to be understood. Considering the limitations of the trials on examining the root causes of wartime violence against women,<sup>130</sup> truth commissions are a more promising transitional justice mechanism for this purpose. Truth commissions have a potential to provide gender transformative justice since they aim to go beyond ‘publicizing

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<sup>123</sup> Tara J. Melish, ‘Implementing Truth and Reconciliation’ (2012) 19 *Buffalo Human Rights Law Review* 1, 59-60.

<sup>124</sup> Onur Bakiner, ‘One Truth Among Others? Truth Commissions’ Struggle for Truth and Memory’ (2015) 8 *Memory Studies* 345, 345.

<sup>125</sup> Melish (n 123) 66.

<sup>126</sup> Marta Valiñas & Kris Vanspauwen, ‘Truth-Seeking After Violent Conflict: Experiences from South Africa and Bosnia and Herzegovina’ (2009) 12 *Contemporary Justice Review* 269, 275.

<sup>127</sup> Melish (n 123) 59-60.

<sup>128</sup> Cheryl Lawther, ‘The Cast of the Past’: Truth Commissions and the Making and Marginalization of Identity’ (2018) 17 *Ethnopolitics* 113.

<sup>129</sup> See Chapter 3.

<sup>130</sup> See Julie Mertus, ‘The Impact of International Trials for Wartime Rape on Women’s Agency’ (2004) 6 *International Feminist Journal of Politics* 110.

(...) unacknowledged violations and *providing novel explanations for the causes and consequences of violence*.<sup>131</sup>

In Bosnia and Herzegovina and other neighbouring countries involved in the war, there exists no truth commission. Although some attempts have been made to introduce a 'National Truth and Reconciliation Commission in Bosnia and Herzegovina', as a result of the ICTY's opposition due to institutional rivalry and competition for resources and local communities' unwillingness,<sup>132</sup> these attempts ended in failure. However, this thesis pays special attention to 'unofficial truth projects'<sup>133</sup> and considers them important and successful mechanisms in terms of identification of the root causes of wartime violence against women.<sup>134</sup>

As a final point, it should be underlined here that structural causes of a conflict and root causes of violence depend very much on the perspective one adopts.<sup>135</sup> It therefore must be highlighted that defining what the root causes of a conflict are is not so much a neutral act.<sup>136</sup> In this chapter, the root causes of wartime violence against women are examined through a gendered approach. The findings have been reached by taking the theory of gender transformative justice as an approach. For this reason, there is a clear link between the root causes of wartime violence against women identified in this chapter and the perspective this thesis adopts.

#### 4. Conclusion

This chapter underlined the necessity of a gender transformative approach by engaging with feminist approaches revealing the connections between peacetime and wartime violence against women. Interaction with feminist scholars' work has enabled the researcher to explore the interactions between feminist approaches and transformative justice and to see

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<sup>131</sup> Bakiner (n 124) 346 (emphasis added).

<sup>132</sup> Jasna Dragovic-Soso, 'History of a Failure: Attempts to Create a National Truth and Reconciliation Commission in Bosnia and Herzegovina, 1997-2006' (2016) 10 *International Journal of Transitional Justice* 292, 294.

<sup>133</sup> See Louis Bickford, Unofficial Truth Projects (2007) 29 *Human Rights Quarterly* 994.

<sup>134</sup> See Chapter 5.4.

<sup>135</sup> Daniela Körppen, 'The Circularity of Conflict Dynamics: A Critical Review' Berghof Research Center for Constructive Conflict Management – Berghof Handbook Dialogue no.5, [https://www.berghof-foundation.org/fileadmin/redaktion/Publications/Handbook/Dialogue\\_Chapters/dialogue5\\_koerppen\\_cmm.pdf](https://www.berghof-foundation.org/fileadmin/redaktion/Publications/Handbook/Dialogue_Chapters/dialogue5_koerppen_cmm.pdf), accessed 3 November 2019, pp 1-8, 3

<sup>136</sup> *ibid.*

the problems within a gender-neutral process of transitional justice. Both transformative justice and feminist approaches suggest searching for the root causes of the violence in pre-conflict settings. Feminist scholars believe that violence against women in the case of Bosnia and Herzegovina is a consequence of a patriarchal, misogynist, and militarist context in which women bodies and the construction of these bodies gained a particular meaning long before the war. They claimed that the wartime rapes in Bosnia and Herzegovina, in our case, cannot be divorced from the country's gender and power relations. This is the very point where transformative justice criticises transitional justice: neglect of gender and power relations as a reason for violence against women and as a contributing factor to the suffering women endure.

Wartime violence against women needs to be analysed by looking at structurally embedded gender and power relations that existed long before the wars. Comprehending these underlying reasons and the root causes of wartime violence against women necessitates gender-sensitive legal, social, and political mechanisms. These mechanisms, from a gender transformative justice point of view, can create a reconstruction process with that women would not have to go back to the societies where they are exposed to degradation, humiliation and discrimination. As both feminist approaches and gender transformative justice suggest, in peacebuilding reconstruction processes, violence against women in wartime should not be delinked from violence against women in 'peacetime' in order to provide gender-just legal responses.

The previous two chapters presented and argued that in order to provide a gender-just peacebuilding process, gender transformative justice is required. Such an approach accords with the perspectives of feminist theorists regarding the meaning and causes of wartime violence against women. Gender transformative justice, unlike transitional justice theory and practice, is more responsive to the patriarchal society structures, gender subordination, and structural gender inequalities which date back to 'peacetimes'. After teasing out the links between the theories of conflict transformation and transformative justice through a gender lens, now the thesis turns to the legal regulations under international law in order to find out the extent to which these legal frameworks provide gender transformative justice.

## **CHAPTER 4: THE ROLE OF THE UNITED NATIONS WOMEN, PEACE AND SECURITY AGENDA IN PROMOTING GENDER JUSTICE IN POST-CONFLICT SOCIETIES: SEARCHING FOR GENDER TRANSFORMATIVE JUSTICE IN INTERNATIONAL LAW**

### **1. Introduction**

The previous two chapters examined how transitional justice fails to be gender inclusive and argued that in order to provide gender justice in transition periods gender transformative justice is needed. The aim of this chapter is to examine the extent to which international law provides gender transformative legal frameworks. This chapter analyses the role of the United Nations (the UN), in particular the Security Council (the SC), during the transition from conflict to peace. It scrutinises the Women, Peace and Security (the WPS) agenda of the SC by analysing the Resolutions adopted in the context of post-conflict reconstruction and peacebuilding. This chapter investigates whether the WPS agenda of the SC offers any opportunity for gender transformative justice. Post-conflict reconstruction and peacebuilding processes, despite posing massive challenges, can also be processes which change the social, economic and structural inequalities in a society. This chapter addresses whether international law provides an agenda to challenge these pre-existing inequalities in post-conflict societies.

The UN SC is one of the most important actors in transitional justice processes. It is legally authorised to restore international peace and security.<sup>1</sup> Starting from 2000, the SC has made women a part of its agenda and considered women as significant actors for peace processes. The SC has assigned multiple responsibilities for state parties to fulfil at national levels. To understand the failures of the state parties, it is necessary to observe the limitations of the international legal frameworks, which this chapter aims to illustrate.

Section 2 examines how women have been the concern of the SC. Here, the steps taken by the SC are analysed. Starting from the first SC Resolution of the WPS agenda, the subsequent Resolutions and their contributions are scrutinised. In section 3, accountability measures in the WPS agenda are examined; and the theoretical discussion is applied to the case study of

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<sup>1</sup> UN, Charter of United Nations, 24 October, 1 UNTS XVI, Chapter VII (UN Charter hereinafter) article 39.

Bosnia-Herzegovina. A critical analysis of the WPS agenda is put forward using the approach of gender transformative justice. The aim of section 3 is to find out whether the SC WPS agenda offers gender transformative justice for post-conflict societies. The section proposes a more integrated agenda between the WPS agenda and international human rights conventions to provide a gender transformative justice. The chapter, as a whole, traces how the WPS agenda has been interpreted 'from the global realm into national post-conflict contexts'.<sup>2</sup>

## **2. Recognition of Women's Roles in Transitional Contexts: An Examination of the WPS Agenda**

The previous chapter examined the conflicting approaches to the causes of wartime rape. This section examines the approach taken by international law. Wartime rape has long been considered as a 'by-product' of war.<sup>3</sup> Both law and society regarded wartime rape as a consequence of war which cannot be avoided or controlled.<sup>4</sup> The former Yugoslavian and Rwandan genocides have been landmark case studies by which to understand the fact that wartime rape is not actually a consequence of any lack of control; it is a controlled action of sex as a weapon.<sup>5</sup> The International Criminal Tribunals of the former Yugoslavia and Rwanda recognised wartime rapes as war crimes, crimes against humanity, and genocide.<sup>6</sup> Since these tribunals were created by the SC under Chapter VII of the UN Charter, wartime rape has been established as a matter of international concern. As Chapter VII of the Charter is concerned with 'international peace and security' measures, wartime rape has been seen by the SC as a threat to the peace and security of the international community.

Although these developments have been essential in terms of the criminalisation of wartime rape rather than regarding it as a 'by-product' of war, the focus has been on women as merely

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<sup>2</sup> Annika Björkdahl and Johanna Mannergren Selimovic, 'Translating UNSCR 1325 from the Global to the National: Protection, Representation and Participation in the National Action Plans of Bosnia-Herzegovina and Rwanda' (2015) 15 *Conflict, Security and Development* 311, 312.

<sup>3</sup> Susan Brownmiller, *Against Our Will: Men, Women and Rape* (Ballantine Books 1975) 32.

<sup>4</sup> Pamela Scully, 'Vulnerable Women: A Critical Reflection on Human Rights Discourse and Sexual Violence' (2009) 23 *Emory International Law Review* 113, 114.

<sup>5</sup> *ibid.*

<sup>6</sup> See *Prosecutor v Dusko Tadic* (Appeal Judgement), IT-94-1-A, International Criminal Tribunal for the former Yugoslavia (ICTY), 15 July 1999 <<http://www.refworld.org/docid/40277f504.html>> accessed 3 October 2018.

*Prosecutor v Jean-Paul Akayesu* (Trial Judgement), ICTR-96-4-T, International Criminal Tribunal for Rwanda (ICTR), 2 September 1998 <<https://www1.umn.edu/humanrts/instree/ICTR/AKAYESU ICTR-96-4/Judgment ICTR-96-4-T.html>> accessed 3 October 2018.

‘victims’ who need to be protected. For the first time, at the Fourth World Conference on Women in 1995 with the adoption of Beijing Declaration and Platform for Action (the ‘Beijing Conference’ or BPFA), there was a call for the “equal access and full participation of women in power structures and their full involvement in all efforts for the prevention and resolution of conflicts”.<sup>7</sup> It was an important step that women were not seen only as ‘victims’, but also that their participation in decision-making positions was encouraged.<sup>8</sup> At the Beijing Conference, it was correctly put forward that the status of women and girls in a society exacerbates the consequences of an armed conflict for them.<sup>9</sup> The unequal social structures have been correctly connected with the suffering of women and girls in times of conflicts during the Beijing Conference.

In their article examining the progress of the Beijing Conference, Judith Gardam and Michelle Jarvis held that at the time the proposed strategic action plans were ambiguous and general.<sup>10</sup> The Beijing Conference had no specific goals; it was criticised for being very ‘modest’ in its goals even at the time of the conference according to the contemporary critics.<sup>11</sup> For instance, the BPFA called for “*reductions* in military expenditures”<sup>12</sup> instead of the “*elimination* of all weapons of mass destruction, especially nuclear weapons” as proposed in the draft Platform.<sup>13</sup> The Beijing Conference avoided raising radical feminist criticisms against militarism and armament. Instead, liberal solutions for women were brought forward. For example, in the section on ‘women and the economy’, women’s participation in all sectors, including banking and economic infrastructure, was promoted.<sup>14</sup> Dianne Otto correctly criticises this approach by asking whether the solution for every woman is to become a freelance entrepreneur.<sup>15</sup>

Although the Beijing Conference fell short of recommending satisfactory solutions for women’s empowerment, this may have been due to the identification of the problems

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<sup>7</sup> United Nations, Beijing Declaration and Platform of Action (BPFA), adopted at the Fourth World Conference on Women, 27 October 1995 <<http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>> accessed 3 October 2018, para 134.

<sup>8</sup> *ibid.*

<sup>9</sup> *ibid* para 135.

<sup>10</sup> Judith Gardam and Michelle Jarvis, ‘Women and Armed Conflict: The International Response to the Beijing Platform for Action’ (2000-2001) 32 *Columbia Human Rights Law Review* 1, 65.

<sup>11</sup> See Dianne Otto, ‘Holding up Half the Sky, but for Whose Benefit? A Critical Analysis of the Fourth World Conference on Women’ (1996) 6 *Australian Feminist Law Journal* 7, 24.

<sup>12</sup> Beijing Conference (n 7) para 138 (emphasis added).

<sup>13</sup> Otto (n 11) 24 (emphasis added).

<sup>14</sup> Beijing Conference (n 7) para 167.

<sup>15</sup> Otto (n 11) 21.



without a deep analysis. This very point has been critiqued by Hilary Charlesworth. Charlesworth pointed out that the Beijing Conference had evaluated women's inequality as a sex problem instead of a gender issue.<sup>16</sup> To take Charlesworth's example, for instance, whilst "a gender perspective in the resolution of armed or other conflicts and foreign occupation" was promoted at the Beijing Conference, the same sentence ended with a call for nominating candidates to judicial and other positions with a gender balance.<sup>17</sup> According to Charlesworth, gender was used as a synonym for women at the Beijing Conference.<sup>18</sup> Similarly Otto claimed that it is not sufficient to give rights to women while men are already enjoying those rights.<sup>19</sup> This would leave the pre-existing and ongoing gender hierarchies intact. Social, political, and economic institutions reproduce these hierarchies; to challenge them and not to reconstruct the pre-existing structures, more than equal representation is required.<sup>20</sup> Rather than sexual or biological-based explanations and solutions, a gender-based approach is needed. As long as women's descriptive presence is regarded as the solution, the underlying structures and assumptions of existing decision-making structures will remain unquestioned.<sup>21</sup>

Despite the lack of a comprehensive analysis and evaluation of the inequalities, the Beijing Conference was the first platform that had promoted women's participation in the decision-making processes at all levels. Before the conference, both International Humanitarian Law (IHL) and International Criminal Law (ICL) through international criminal tribunals (ICTY and ICTR) considered women as 'the victims of wars'. This victimisation prevented the 'agency' role for women in peacebuilding processes.<sup>22</sup> The Beijing Conference was the first step to change this language and to see women as 'subjects' of international law. However, from the perspective of international law the Beijing Conference is not legally binding; in contrast to it, the SC Resolutions have more potential as instruments to reinforce the human rights claims of women in transitional contexts.<sup>23</sup>

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<sup>16</sup> Hilary Charlesworth, 'Are Women Peaceful? Reflections on the Role of Women in Peace-Building' (2008)

<sup>16</sup> *Feminist Legal Studies* 347, 351.

<sup>17</sup> Beijing Conference (n 7) para 142 (b).

<sup>18</sup> Charlesworth (n 16).

<sup>19</sup> Otto (n 11) 28.

<sup>20</sup> *ibid.*

<sup>21</sup> *ibid* 13.

<sup>22</sup> For a feminist discussion on the creation of 'the language of victimisation' in post-colonialism context see Ratna Kapur, *Erotic Justice: Post-Colonialism, Subjects and Rights* (Glasshouse Press 2005).

<sup>23</sup> Niamh Reilly, 'Seeking Gender Justice in Post-conflict Transitions: Toward a Transformative Women's Human Rights Approach' (2007) 3 *International Journal of Law in Context* 155, 166.

## 2.1. Recognition of Women's Roles in Transitional Contexts by the Security Council (SC)

The SC has long been criticised by feminists because of its 'impoverished' interpretation and understanding of international peace and security.<sup>24</sup> The notions of 'peace' and 'security' have been criticised since they focus only on militaristic and state-centred violations; this reproduced the gender hierarchies in post-conflict societies by increasing the insecurity of women.<sup>25</sup> The SC addressed only inter-state conflicts under Chapter VII of the UN Charter. This limited approach prevented the broader interpretation of the concepts of peace and security to the extent that it would include the insecurity of civilian populations.

There have been important structural changes that have led to the current broad interpretation of the concepts of peace and security. After the Cold War, the SC shifted its focus towards intrastate conflicts in which the civilian population was the main target of the violations.<sup>26</sup> After the SC was stripped off its 'veto straitjacket',<sup>27</sup> such situations started to be the common concern of all the SC members. The genocides in the former Yugoslavia and Rwanda were also influential in the focus on internal conflicts and changed the way that the concepts of peace and security were previously defined. This expansion resulted in interventions in situations which were basically domestic disputes.<sup>28</sup>

For the first time, in Resolution 1265 (1999), the SC expressed "its willingness to respond to situations of armed conflict where civilians are being targeted".<sup>29</sup> The shift in focus from militaristic and state-centred security and peace towards the protection of civilians as a means of achieving the goal of peace and security paved the way for the incorporation of women's issues in post-conflict reconstruction processes. The first SC resolution to affirm the role of women in transitional contexts beyond 'a victim-centred discourse' was Resolution 1325

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<sup>24</sup> Dianne Otto, 'The Security Council's Alliance of Gender Legitimacy: The Symbolic Capital of Resolution 1325' in Hilary Charlesworth and Jean-Marc Coicaud (eds), *Fault Lines of International Legitimacy* (CUP 2012) pp 239-276, 251.

<sup>25</sup> *ibid.*

<sup>26</sup> Alain-Guy Tachou-Sipowo, 'The Security Council on Women in War: Between Peacebuilding and Humanitarian Protection' (2010) 92 *International Review of the Red Cross* 197, 206.

<sup>27</sup> *ibid.*

<sup>28</sup> Dianne Otto, 'Securing the 'Gender Legitimacy' of the UN Security Council: Prising Gender from its Historical Moorings' (2004) The University of Melbourne Faculty of Law Legal Studies Research Paper No. 92 <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=585923](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=585923)> accessed 3 October 2018, 4.

<sup>29</sup> UNSC Resolution 1265 (17 September 1999) UN Doc S/RES/1265, para 10.

(2000).<sup>30</sup> In the following sections, the SC Resolutions adopted in the context of WPS agenda are scrutinised.

## 2.2.SC Resolution 1325: A Preliminary Step

Resolution 1325 was a landmark for the UN SC's WPS agenda. For the first time, women's "full participation in the peace processes" was recognised in a legally binding document.<sup>31</sup> Moreover, the 'equal participation' and 'full involvement' of women in all decision-making processes with regard to conflict prevention and resolution was affirmed.<sup>32</sup> According to Christine Bell and Catherine O'Rourke, Resolution 1325 was highly important on several grounds: for the first time the UN SC paid full attention to women in armed conflicts and recognised them as agents who are capable of making decisions about preventing and resolving the conflicts.<sup>33</sup> Also, it was acknowledged by a 'formal high-level' international organisation that the exclusion of women from conflict resolution processes is a threat to international peace and security,<sup>34</sup> since the main concern of the SC inside the UN is the maintenance and restoration of peace and security.<sup>35</sup>

Although Resolution 1325 has been welcomed in the literature, the same problem which is encountered in the Beijing Conference is also the problem with Resolution 1325: identification of the problems without a deep analysis. Whilst Resolution 1325 concerns the fact that women comprise "the vast majority of those adversely affected by armed conflict",<sup>36</sup> the root causes of this situation have not been addressed. Although Resolution 1325 aims to protect 'women and girls' from "gender-based violence, particularly rape and other forms of sexual abuse",<sup>37</sup> the reasons behind this vulnerability have not been questioned. This reinforces the misconception of gender as a 'women's issue'.<sup>38</sup> The same conclusion can be inferred from the absence of any reference to 'rape against men and child soldiers' in

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<sup>30</sup> Fionnuala Ní Aoláin, 'Advancing Feminist Positioning in the Field of Transitional Justice' (2012) 6 *International Journal of Transitional Justice* 205, 214.

<sup>31</sup> UN SC Resolution 1325 (31 October 2000) UN Doc S/RES/1325, Preamble.

<sup>32</sup> *ibid* Preamble.

<sup>33</sup> Christine Bell and Catherine O'Rourke, 'Peace Agreements or Piece of Paper? The Impact of UNSC Resolution 1325 on Peace Processes and Their Agreements' (2010) 59 *International and Comparative Law Quarterly* 941, 944.

<sup>34</sup> *ibid*.

<sup>35</sup> UN Charter (n 1) chapter VII.

<sup>36</sup> Resolution 1325 (n 31) Preamble.

<sup>37</sup> *ibid* para10.

<sup>38</sup> Laura J. Shepherd, *Gender, Violence and Security: Discourse as Practice* (Zed Books 2008) 120.

Resolution 1325. The resolution considers rape and other sexual violence as a crime committed for sexual and biological reasons.

Since the diagnosis of the problem falls short of the structural reasons, the solutions offered become also problematic. The solutions remain protection-based. The discourse in Resolution 1325 which is intended to put an end to gender-based violence suggests the protection of women by external actors. This can be seen in the language used in Resolution 1325. In this Resolution, women were associated with ‘children’ or ‘girls’. Perpetuation of stereotyping language in the UN documents, including Resolution 1325, precludes agency roles for women and “maintains them [women] in the subordinated position of victims”.<sup>39</sup> Women are construed as dependent, defenceless and ‘helpless’<sup>40</sup> like children.<sup>41</sup>

R. Charli Carpenter illustrated this point clearly. In her book, Carpenter analysed SC documents through the use of words ‘men’, ‘women’ and ‘children’ from 1999 to 2003. Carpenter’s work reveals that whilst ‘women and children’ were linked 163 times in the SC documents, ‘women as combatants’ was referred to six times and ‘men as vulnerable’ only once.<sup>42</sup> The language preaches ‘protection’ for women. This is not to say that the protection of women (and children) is not necessary. However, if ‘protection’ means “putting women and children into refugee camps where they have nothing to do, have no educational opportunities or work”,<sup>43</sup> subjecting the women in these refugee camps to sexual violence, returning women back to the domestic sphere, this type of ‘protection’ is an absolute barrier preventing women from participating in decision-making processes.

In support of this view, the feminist literature has found that UN SC Resolutions do not go beyond protection and in fact correlate women with victimhood, motherhood or uncritical peace advocacy.<sup>44</sup> These stereotypes and understandings hinder ‘agency’ language. They fix ‘women and children’ as the ones who need protection and “define men as responsible for

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<sup>39</sup> Nadine Puechguirbal, ‘Discourses on Gender, Patriarchy and Resolution 1325: A Textual Analysis of UN Documents’ (2010) 17 *International Peacekeeping* 172, 172.

<sup>40</sup> Dianne Otto, ‘The Exile of Inclusion: Reflections on Gender Issues in International Law over the Last Decade’ (2009) 10 *Melbourne Journal of International Law* 1, 14.

<sup>41</sup> Otto (n 28) 8.

<sup>42</sup> R. Charli Carpenter, *Innocent Women and Children: Gender, Norms and the Protection of Civilians* (Ashgate 2006) 39.

<sup>43</sup> Abraham D. Sofaer, “‘Mainstreaming’ Women through U.N. Security Council Resolutions: Comments on a Paper by Haynes, Cahn, & Ní Aoláin’ (2012) 11 *Santa Clara Journal of International Law* 219, 221.

<sup>44</sup> Bell and O’Rourke (n 33) 945.

protecting ‘their’ women and children and the nation as a whole”.<sup>45</sup> One criticism in much of the literature on Resolution 1325 is that it fell short of offering an ‘agency’ language and reaffirmed the ‘vulnerability, passiveness, motherhood and peacefulness’ of women. It offered nothing to solve the dilemma of “How do vulnerable women who need protection morph into the strong leaders who will help shape new terrains of liberty and security?”<sup>46</sup> The Resolution missed the opportunity to provide a new language other than the existing victimhood-based one. Also, although it was the first SC Resolution to promote the full participation of women in all the conflict resolution processes, it missed the opportunity to understand why particular people in a society (women or men) are the targets of specific acts of violence. Resolution 1325 overlooked social, structural, and economic inequalities-based explanations and solutions for those particular types of violence.

The depiction of ‘vulnerable women’ as portrayed by Resolution 1325 has been severely criticised by feminist scholars since it treats women as needing military protection of the SC.<sup>47</sup> One criticism in the literature on this topic is that by focusing on violations of women’s human rights, Resolution 1325 might be used “as a tool to justify military occupation on behalf of ‘liberating’ women”.<sup>48</sup> The SC has been accused of engaging selectively with women’s rights and promoting feminist ideas as long as they fit in with its own institutional agenda.<sup>49</sup> Since the UN SC has the legal authorization to use force under Chapter VII of the UN Charter,<sup>50</sup> the SC might increase its legitimacy to use force by instrumentalising feminist views and interests.

The other criticism is the absence of any condemnation of militarism and of wars.<sup>51</sup> Resolution 1325 contained no specific reference to general disarmament or anti-militarism as a recommended solution. This is an “implicit endorsement of war”.<sup>52</sup> Wars have not been seen as the reasons for those extra violations of women’s human rights, instead conflicts

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<sup>45</sup> Shepherd (n 38) 119.

<sup>46</sup> Scully (n 4) 120.

<sup>47</sup> See Dianne Otto, ‘Women, Peace and Security: A Critical Analysis of Security Council’s Vision’ (LSE Women, Peace and Security Working Paper Series, 2016) <<http://blogs.lse.ac.uk/wps/2017/01/09/women-peace-and-security-a-critical-analysis-of-the-security-councils-vision/>> accessed 3 October 2018, 5.

<sup>48</sup> Carol Cohn, Helen Kinsella and Sheri Gibbings, ‘Women, Peace and Security Resolution 1325’ (2004) 6 *International Feminist Journal of Politics* 130, 138.

<sup>49</sup> Dianne Otto, ‘Power and Danger: Feminist Engagement with International Law through the UN Security Council’ (2010) 35 *Australian Feminist Law Journal* 97, 99.

<sup>50</sup> UN Charter (n 1) article 41.

<sup>51</sup> Otto (n 28) 7.

<sup>52</sup> Gina Heathcote, ‘Naming and Shaming: Human Rights Accountability in Security Council Resolution 1960 (2010) on Women, Peace and Security’ (2012) 4 *Journal of Human Rights Practice* 82, 88.

have been seen by the SC as the solutions to stop those human rights violations.<sup>53</sup> Resolution 1325 fails to illustrate the “depth and subtlety of the connection between militarization and gender”.<sup>54</sup> Otto asserted that the SC’s way of integration of the women’s interests into the peace and security context dilutes the legitimacy of feminist critiques directed at militarism.<sup>55</sup> There is a risk that the WPS agenda might legitimise the foreign military interventions of the SC<sup>56</sup> by widening the scope of the authorisation of the SC’s use of force.

Subsequent SC Resolutions also illustrate that the SC is unwilling to eliminate militarism; this position proves the feminist criticisms right. This becomes one of the weakest points of Resolution 1325 and subsequent Resolutions: they do not target “ending the war itself”.<sup>57</sup> This leads to confining women to the ‘prescribed’ solutions rather than challenging militarist and imperialist power structures.<sup>58</sup> The following section now turns to scrutinising the subsequent SC Resolutions adopted within the context of the WPS agenda.

### **2.3.Resolution 1820: Back to the Language of ‘Victims’**

Almost a decade later, the SC adopted another Resolution within the scope of the WPS agenda: Resolution 1820 (2008). It has commonly been assumed by the literature that instead of broadening the scope of Resolution 1325, Resolution 1820 was confined to a very small area: wartime sexual violence against women and girls. In the Resolution, women were characterised “primarily by their violability”<sup>59</sup> and this maintained the discourse of ‘vulnerable women who need protectors’. Throughout the Resolution, the protection of women from rape and other forms of sexual violence was promoted. Only in paragraph 12 were women encouraged “to participate in discussions pertinent to the prevention and resolution of conflict, maintenance of peace and security, and post-conflict peacebuilding”.<sup>60</sup>

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<sup>53</sup> cf. African Union, Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa, 11 July 2003 <<http://www.refworld.org/docid/3f4b139d4.html>> accessed 3 October 2018. In contrast to the SC WPS agenda, in this protocol (better known as the Maputo Protocol), reduction in military expenditure in favour of spending on social development has been recognised as a right to peace of women in its article 10 ‘right to peace’.

<sup>54</sup> Bell and O’Rourke (n 33) 973. For a thorough analysis regarding the relationship between militarization and gender, see Laura Sjoberg, *Gender, War, and Conflict* (Polity Press 2014).

<sup>55</sup> Otto (n 24) 274.

<sup>56</sup> Nicola Pratt and Sophie Richter-Devroe, ‘Critically Examining UNSCR 1325 on Women, Peace and Security’ (2011) 13 *International Feminist Journal of Politics* 489, 495.

<sup>57</sup> Cynthia Cockburn, *From Where We Stand: War, Women’s Activism and Feminist Analysis* (Zed Books 2007) 147.

<sup>58</sup> Otto (n 11) 28.

<sup>59</sup> Otto (n 40) 13.

<sup>60</sup> UN SC Resolution 1820 (19 June 2008) UN Doc S/RES/1820, para 12.

This illustrates that the ‘agency’ role for women promoted in Resolution 1325 yielded its place to the sexualised representation of women.

The narrow scope of Resolution 1820 has been the main concern in the literature. The main goal in Resolution 1820 (protection against wartime sexual violence) is confined to only a specific group: women and girls.<sup>61</sup> As in Resolution 1325, sexual violence against men and boys has remained untouched. Such an emphasis is problematic since it focuses on the protection of women instead of the elimination of gender-oriented atrocities.<sup>62</sup> Resolution 1820 noted that sexual violence against women and girls is used as “a tactic of war to humiliate, dominate, instil fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group”.<sup>63</sup> However, it has not addressed the reasons of why *only* particular violence at a specific group of people (women and girls) has been vocal in a conflicting society. The absence of any language of sexual violence against men and boys depicts women as the only ‘vulnerable’ group which needs the protection of external actors.<sup>64</sup> Thus, Resolution 1820 fell behind Resolution 1325 with this exclusive emphasis on ‘vulnerability’ which dilutes the empowerment of women as rather promoted in Resolution 1325.

The narrow perception of sexual violence against women also prevents the inclusion of the different conflict experiences of women in a peace process.<sup>65</sup> Physical harms such as injury to reproductive organs, unwanted pregnancies from rape, or psychological effects, including depression, shock and suicide attempts, are only some of the harms that women experience during and after conflicts.<sup>66</sup> Neither Resolution 1325 nor Resolution 1820 offers anything to

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<sup>61</sup> Seryon Lee, ‘Legal Feminism and the UN’s Gender Mainstreaming Policy: Still Searching for the Blind Spot?’ (2013) 6 *Journal of East Asia and International Law* 367, 380.

<sup>62</sup> *ibid.*

<sup>63</sup> Resolution 1820 (n 60) Preamble.

<sup>64</sup> There is very little literature in relation to sexual violence against men and boys: See Sandesh Sivakumaran, ‘Sexual Violence against Men in Armed Conflict’ (2007) 18 *European Journal of International Law* 253; R. Charli Carpenter, ‘Recognizing Gender-Based Violence against Civilian Men and Boys in Conflict Situations’ (2006) 37 *Security Dialogue* 83; Dustin A. Lewis, ‘Unrecognized Victims: Sexual Violence against Men in Conflict Settings under International Law’ (2009-2010) 27 *Wisconsin International Law Journal* 1; Hilmi M. Zawati, ‘Impunity or Immunity: Wartime Male Rape and Sexual Torture as a Crime Against Humanity’ (2007) 17 *Torture* 27; Sarah Solangon and Preeti Patel, ‘Sexual Violence against Men in Countries Affected by Armed Conflict’ (2012) 12 *Conflict, Security and Development* 417; Philipp Schulz, ‘Displacement from Gendered Personhood: Sexual Violence and Masculinities in Northern Uganda’ (2018) 94 *International Affairs* 1101.

<sup>65</sup> Naomi R. Cahn, ‘Women in Post-Conflict Reconstruction: Dilemmas and Directions’ (2006) 12 *William and Mary Journal of Women and the Law* 335, 344.

<sup>66</sup> Rashida Manjoo and Calleigh McRaith, ‘Gender-Based Violence and Justice in Conflict and Post-Conflict Areas’ (2011) 44 *Cornell International Law Journal* 11, 16. See also Ramona Vijeyarasa, ‘Putting Reproductive Rights on the Transitional Justice Agenda: The Need to Redress Violations and Incorporate Reproductive Health Reforms in Post-Conflict Development’ (2009) 15 *New England Journal of International and Comparative Law* 41.

combat the short- and long-term effects of such violence. Other than the protection of women, the WPS agenda does not help women to bring their experiences to the peace table and prevents peace negotiations from devising remedies to stop the continuums in the violence.

Resolution 1820 has an exclusionary focus on ending impunity for sexual crimes.<sup>67</sup> The SC, in dealing with the sexual violence issue, considered sexual violence in conflicts as within the scope of its responsibilities under article 24 of the UN Charter: the “maintenance of international peace and security”.<sup>68</sup> Ending sexual violence has become one of the goals of the SC. Although in order to combat impunity the Resolution 1820 established a particular aim, such as the “exclusion of sexual violence crimes from amnesty provisions”,<sup>69</sup> rape and other acts of sexual violence were considered as crimes which *can* constitute a war crime, a crime against humanity, or a constitutive act regarding genocide.<sup>70</sup> However, sexual violence has already been acknowledged in international law as a war crime and a component of genocide. The word ‘can’ remains retrogressive and dilutes the recognition of important norms which were gained as a result of feminist intervention in international law.<sup>71</sup>

### **3. Enforceability of a Gender Transformative Justice under International Law: Accountability Issue of the Resolutions**

This section presents a discussion of the accountability issues in the WPS agenda at two specific points. First, the section demonstrates the debate in the literature regarding the legal status of the WPS Resolutions. There is no consensus in the literature as to whether these Resolutions are binding on the member states of the UN under international law. The section argues that this discrepancy could be attributed to the vagueness of the position of women’s issues in the debate on international peace and security. Although there is no doubt that the concepts of peace and security have been broadened to the extent that women’s issues can be considered within this scope, there is no clear answer for when and how violations of

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<sup>67</sup> Sam Cook, ‘Security Council Resolution 1820: On Militarism, Flashlights, Raincoats, and Rooms with Doors – A Political Perspective on Where It Came from and What It Adds’ (2009) 23 *Emory International Law Review* 125, 126.

<sup>68</sup> UN Charter (n 1) article 24.

<sup>69</sup> Resolution 1820 (n 60) para 4.

<sup>70</sup> *ibid.*

<sup>71</sup> Amy Barrow, ‘UN Security Council Resolutions 1325 and 1820: Constructing Gender in Armed Conflict and International Humanitarian Law’ (2010) 92 *International Review of the Red Cross* 221, 232.



women's rights would amount to a breach of international peace and security under international law.

Second, the section analyses the accountability issue in the resolutions by bringing to the fore national implementation of the resolutions in the form of National Action Plans (NAPs). The NAPs impose an accountability mechanism on states. Difficulties arise, however, when an attempt is made to implement these plans. The section argues that the nature of both the Resolutions and the NAPs are a long way away from offering gender transformative justice to post-conflict societies.

### 3.1.Accountability Mechanisms in the WPS Resolutions

There are conflicting perspectives in the literature with regard to the discussion of the binding or non-binding nature of the WPS Resolutions. Although some scholars defend the binding nature of the resolutions,<sup>72</sup> there are many others who see no specific criterion to claim that they are binding on states.<sup>73</sup> The latter view calls the WPS Resolutions 'thematic resolutions' or 'declaratory resolutions' which aim to bring politically charged discussions to the fore rather than offering legally binding resolutions adopted under Chapter VII of the UN Charter.

A textual reading of Resolution 1325 shows that the language in this resolution seems declaratory rather than peremptory. The resolution, *inter alia*, 'urges', 'expresses', 'encourages' and 'calls on' states to take particular measures. The resolution lacks the language of 'requests', 'decides', 'directs' or 'authorises'. The language preferred in Resolution 1325 is far from requiring taking measures for an emergent situation. This strengthens the position that Resolution 1325 avoids creating a binding obligation on member states. As Sahla Aroussi has pointed out, the language in Resolution 1325 makes accountability rhetorical.<sup>74</sup> For instance, this resolution stresses the need to exclude sexual and other violence against women

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<sup>72</sup> See Reilly (n 23) 166. See also Natalie Florea Hudson, *Gender, Human Security and the United Nations: Security Language as a Political Framework for Women* (Routledge 2010) 51; Cohn, Kinsella and Gibbins (n 48); Carol Cohn, 'Feminist Peacemaking' (2004) 21 *Women's Review of Books* 8.

<sup>73</sup> See Otto (n 24) 263. See also Claudia von Braunmühl, 'A Feminist Analysis of UN Security Council Resolutions on Women, Peace and Security' in Gülay Caglar, Elizabeth Prügl and Susanne Zwingel (eds), *Feminist Strategies in International Governance* (Routledge 2013) pp 163-180, 165; C. Cora True-Frost, 'The Security Council and Norm Consumption' (2007) 40 *International Law and Politics* 115.

<sup>74</sup> Sahla Aroussi, 'Women, Peace and Security': Addressing Accountability for Wartime Sexual Violence' (2011) 13 *International Feminist Journal of Politics* 576, 581.

and girls from the amnesty provisions “where feasible”,<sup>75</sup> and also requests the Secretary-General “where appropriate” to report progress on gender mainstreaming in peacekeeping missions.<sup>76</sup> Those expressions dilute the accountability measures; Resolution 1325’s language remains rhetorical and thematic/declaratory.

It is very clear from its language that Resolution 1820 takes a firmer position with regards to the accountability for wartime violence against women.<sup>77</sup> Resolution 1820 requests the Secretary-General ‘where appropriate’ to establish a dialogue between the UN and the parties to the conflict on the issues of women.<sup>78</sup> By requesting the member states to exclude sexual violence crimes from amnesty provisions, Resolution 1820 creates another accountability mechanism for states.<sup>79</sup> However, this provision has been criticised since it provides a very narrow justice mechanism by focusing exclusively on criminal prosecution.<sup>80</sup> The retributive justice focus of this particular resolution falls short of victim-centred justice mechanisms. For instance, reparation, compensation, restoration, and restitution mechanisms are more victim-oriented. However, the SC preferred only a retributive justice mechanism to deal with sexual violence crimes and did not take into consideration developing victim-focused justice mechanisms, such as distributive justice<sup>81</sup> or social service justice<sup>82</sup>.

Another accountability mechanism in Resolution 1820 is that the SC not only aims to deal with sexual violence crimes perpetrated by conflicting parties, but also to “implement the policy of zero tolerance of sexual exploitation and abuse in UN peacekeeping operations”<sup>83</sup> itself. To combat this, the UN follows the way of “deployment of a higher percentage of women peacekeepers or police”.<sup>84</sup> This correlation created by the SC has sparked a debate. Nicola Pratt asserted that the increase in the number of women peacekeepers strengthens the sexual roles of women as peaceful and nurturing rather than bringing gender mainstreaming to the UN.<sup>85</sup> The UN-created ‘ideal-type woman peacekeeper’ holds

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<sup>75</sup> Resolution 1325 (n 31) para 11.

<sup>76</sup> Resolution 1325 (n 31) para 17.

<sup>77</sup> Aroussi (n 74) 581.

<sup>78</sup> Resolution 1820 (n 60) para 3.

<sup>79</sup> Resolution 1820 (n 60) para 4.

<sup>80</sup> Aroussi (n 74) 588.

<sup>81</sup> See Morten Bergsmo *et al.* (eds), *Distributive Justice in Transitions* (Torkel Opsahl 2010).

<sup>82</sup> See Cahn (n 65).

<sup>83</sup> Resolution 1820 (n 60) para 6.

<sup>84</sup> Resolution 1820 (n 60) para 8.

<sup>85</sup> Nicola Pratt, ‘Reconceptualizing Gender, Reinscribing Racial-Sexual Boundaries in International Security: The Case of UN Security Council Resolution 1325 on “Women, Peace and Security”’ (2013) 57 *International Studies Quarterly* 772, 776.

particular traits such as “compassion, empathy, asexualised, disciplined and disciplining, connector, consensus-seeker” and “mothering”.<sup>86</sup> The agenda enables the deployment of women on an equality basis by proposing a causal link between ‘increasing the number of women’ and ‘elimination of sexual violence crimes’. However, these responsibilities given to the states parties fail to challenge gender stereotypes within states and to transform the roles of women in the societies.

Subsequent resolutions take accountability issues more seriously. The aim of Resolution 1888 is to integrate the UN with both conflicting parties and civil society. It proposes the appointment of a Special Representative to engage with governments, all parties to the conflict, and civil society in order to address the issue of wartime sexual violence.<sup>87</sup> According to the language of this resolution, the UN not only seeks to create cooperation between itself and the parties to the conflict, but also aims at a more integrated approach *within* its bodies in its combat with sexual violence. It urges “all peacekeeping and other relevant United Nations missions and United Nations bodies” to monitor sexual violence.<sup>88</sup>

In Resolution 1889, the SC concretises the accountability measures by requesting the Secretary-General to submit reports within a specific time period (twelve months)<sup>89</sup> which address the participation and inclusion of women into peacebuilding processes. The SC also requests the Secretary-General to submit “a set of indicators for use at the global level to track implementation of its resolution 1325”.<sup>90</sup> In addition to strengthening the accountability mechanisms, the SC intended to create particular goals which were to be the main criteria to be considered by accountability mechanisms within the UN.

Although there is no doubt that there was an attempt to improve enforcement and accountability issues under international law for the WPS agenda, these measures and mechanisms are not without problems. Especially, Resolution 1960 (2010) has raised concerns regarding the accountability measures and approach of the SC. Resolution 1960 was proposed by the SC to establish strong accountability mechanisms by a range of measures which require states to combat impunity for crimes of sexual violence in armed

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<sup>86</sup> Kathleen M. Jennings, ‘Women’s Participation in UN Peacekeeping Operations: Agents of Change or Stranded Symbols?’ NOREF Norwegian Peacebuilding Resource Centre Report, September 2011, 7-8.

<sup>87</sup> UN SC Resolution 1888 (30 September 2009) UN Doc S/RES/1888 para 4.

<sup>88</sup> *ibid* para 10.

<sup>89</sup> UN SC Resolution 1889 (5 October 2009) UN Doc S/RES/1889 para 19.

<sup>90</sup> *ibid* para 17.

conflict and post-conflict situations.<sup>91</sup> Although the targeted sanctions of the SC against terrorist suspects have been severely criticised by international human rights advocates and there is almost a consensus in the literature that these sanctions violate a number of human rights provisions,<sup>92</sup> the SC aims to use these sanctions also for perpetrators of wartime sexual violence crimes. Resolution 1960, *inter alia*, requests the Secretary-General to apply a ‘listing and delisting’ mechanism to identify the perpetrators of sexual violence in armed conflicts.<sup>93</sup> According to this process, ‘credibly suspected’ parties to the armed conflict are listed and a relevant sanction committee applies the sanctions to these ‘credible’ perpetrators.<sup>94</sup>

According to Heathcote, these measures are “new territory” for the SC.<sup>95</sup> In this new territory, there are a number of problems with regard to the human rights of the accused. First, such a provision rejects an appeal to a higher legal mechanism. Second, information about ‘credible suspects’ found by the Secretary-General becomes sufficient to accuse a person of wartime sexual violence and to apply sanctions. Third, a number of human rights of the accused are breached, such as the right to a fair trial.<sup>96</sup> Other than legal problems regarding Resolution 1960, here we also need to ask what contribution such an accountability mechanism would provide for gender mainstreaming within the UN, if any. It is doubtful that this solution might offer anything encouraging for the participation of women in decision-making processes. The resolution reproduces the gender stereotypes within a post-conflict society and reinforces the ‘victim’ and ‘vulnerability’ roles attributed to women. It needs to be asked whether this ‘naming and shaming’ process is an end goal in itself.<sup>97</sup> If so, how and by what means are women to benefit from this process?

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<sup>91</sup> Heathcote (n 52) 89.

<sup>92</sup> See Alexander Orakhelashvili, ‘The Impact of Peremptory Norms on the Interpretation and Application of United Nations Security Council Resolutions’ (2005) 16 *European Journal of International Law* 59; Nicolas Angelet, ‘International Law Limits to the Security Council’ in V. Gowlland-Debbas (ed.), *United Nations Sanctions and International Law* (Kluwer 2001). See also A. Reinisch, ‘Developing Human Rights and Humanitarian Law: Accountability of the Security Council for the Imposition of Economic Sanctions’ (2001) 95 *American Journal of International Law* 851; E. de Wet, ‘Holding the United Nations Security Council Accountable for Human Rights Violations through Domestic and Regional Courts: A Case of ‘Be Careful What You Wish for?’’, in Jeremy Farrall and Kim Rubenstein (eds), *Sanctions, Accountability and Governance in a Globalised World* (CUP 2009).

<sup>93</sup> UN SC Resolution 1960 (16 December 2010) UN Doc S/RES/1960 para 4.

<sup>94</sup> *ibid* para 3.

<sup>95</sup> Heathcote (n 52) 95.

<sup>96</sup> United Nations, General Assembly, International Covenant on Civil and Political Rights (16 December 1966) UN Treaty Series Vol. 999 <<http://www.refworld.org/docid/3ae6b3aa0.html>> accessed 3 October 2018, articles 14-16 (hereinafter the ICCPR).

<sup>97</sup> Heathcote (n 52) 95.

Although Resolution 1960 is a very recent document and much remains to be seen, other than the focus of a few scholars on this issue, interestingly there has not been much debate in the literature regarding Resolution 1960. ‘Feminist interests’ give the SC a way to broaden the scope of its authority. The SC explores ‘new territories’ to use its power in ‘unchartered waters’. As Otto claimed, the successes of feminism should be weighed against the consequences of these successes.<sup>98</sup> The integration of women’s issues to the SC resolutions is a success. However, a thorough analysis of the WPS agenda shows that the SC applies illegal measures which are also beyond the limitations of the UN Charter in order to ‘protect’ women. Feminist theory must be aware of the risk of legitimising a “hegemonic institution” (the SC)<sup>99</sup> when analysing the accountability measures brought in each new resolution.

### **3.2. NAPs as Accountability Measures: Analysing the Domestic Implementation of NAPs in the Case of Bosnia and Herzegovina**

As a response to the criticisms of the absence of any accountability measures in the first resolution of the WPS agenda, namely in Resolution 1325, in a statement by the President of the SC, member states were invited to adopt National Action Plans (NAPs).<sup>100</sup> Upon this request, the Secretary-General of the UN submitted a report with the intention of illustrating examples of the progress accomplished by states so far.<sup>101</sup> A two-track accountability mechanism was therefore created. First, states were urged to adopt NAPs to implement WPS resolutions in their domestic sphere. Second, the Secretary-General was given the role of reporting the achievements of the states (despite not applying particular goals for a critical evaluation) under the WPS agenda.

This section presents a discussion of NAPs as accountability mechanisms provided by the SC Presidential statement. First, a brief insight into the mechanism of NAPs is presented by bringing their aims and contexts to the fore. Second, the concept of “the reality gap”<sup>102</sup> provided by Ní Aoláin to analyse the gap between law and practice in the WPS agenda is addressed. To examine the reality gap, the case study of the thesis is used. Bosnia and

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<sup>98</sup> Otto (n 49) 99.

<sup>99</sup> *ibid.* For a similar illustration of the dilemmas of women’s rights inclusion see Andrea Cornwall and Maxine Molyneux (eds), *The Politics of Rights: Dilemmas for Feminist Praxis* (Routledge 2007).

<sup>100</sup> Statement by the President of the Security Council, S/PRST/2002/32 (31 October 2002).

As of December 2018, 79 countries adopted an NAP in support of UNSCR 1325, see <<http://www.peacewomen.org/member-states>> accessed 25 December 2018.

<sup>101</sup> Report of the Secretary-General, ‘Women and Peace and Security’ S/2004/814 (13 October 2004).

<sup>102</sup> Ní Aoláin (n 30) 224.

Herzegovina was one of the first states which adopted an NAP and considered praise worthy for its achievements in its NAPs. However, a critical perspective and approach to those NAPs is taken here by analysing the ‘underenforcement’<sup>103</sup> issue discussed by Fionnuala Ní Aoláin and Eilish Rooney. The section aims to find out how successful Bosnia and Herzegovina is in applying the UN SC WPS agenda in its domestic sphere. After a thorough discussion, this section argues that domestic implementation of the WPS agenda fails to provide gender transformative justice in Bosnia and Herzegovina since it fails to address the root causes of wartime violence against Bosnian women.

NAPs are specific plans provided by UN member states to implement the WPS agenda in the domestic sphere and to promote the protection, participation, and leadership of women in peacebuilding processes.<sup>104</sup> In NAPs, states for specific periods illustrate the results and the effects of the integration of WPS resolutions into their legal, judicial, and administrative bodies. An ideal NAP includes clear time-frames, goals and accountability mechanisms.<sup>105</sup> To provide goals and accountability, the process of preparation of an NAP is crucial. During preparation, NAPs should be engaged with civil society and used as an instrument to create dialogue on gender-based violence.<sup>106</sup> In practice, NAPs are generally retrospective documents which demonstrate the activities of each state in the implementation of the WPS Resolutions of the SC.<sup>107</sup> However, an ideal NAP would require clear, forward-looking aims and accountability measures to monitor these aims.

Bosnia and Herzegovina adopted its first NAP in 2010 for a four-year period (2010-2013).<sup>108</sup> A subsequent NAP was adopted in 2014 again for four-year period of time (2014-2017).<sup>109</sup>

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<sup>103</sup> Fionnuala Ní Aoláin and Eilish Rooney, ‘Underenforcement and Intersectionality: Gendered Aspects of Transition for Women’ (2007) 1 *International Journal of Transitional Justice* 338, 350.

<sup>104</sup> Karen McMinn and Catherine O’Rourke, ‘Baseline Study on UNSCR 1325 - Women and Peacebuilding Toolkit: Sharing the Learning’ (December 2012), <[http://eprints.ulster.ac.uk/25297/1/FINAL\\_1325\\_Baseline\\_CFNI.pdf](http://eprints.ulster.ac.uk/25297/1/FINAL_1325_Baseline_CFNI.pdf)> accessed 3 October 2018, 23.

<sup>105</sup> *ibid* 23.

<sup>106</sup> *ibid*.

<sup>107</sup> Jan Marie Fritz, Sharon Doering and F. Belgin Gumru, ‘Women, Peace, Security, and the National Action Plans’ (2011) 5 *Journal of Applied Social Science* 1, 3.

<sup>108</sup> Action Plan for the Implementation of UNSCR 1325 in Bosnia and Herzegovina 2010-2013, Gender Equality Agency of Bosnia and Herzegovina (January 2010) <[http://www.peacewomen.org/assets/file/bosniaherzegovina\\_nationalactionplan\\_2010.pdf](http://www.peacewomen.org/assets/file/bosniaherzegovina_nationalactionplan_2010.pdf)> accessed 3 October 2018 (hereinafter the First NAP).

<sup>109</sup> Action Plan for Implementation of UNSCR 1325 in Bosnia and Herzegovina for the period 2014-2017, Gender Equality Agency of Bosnia and Herzegovina (December 2013) <<https://www.inclusivesecurity.org/wp-content/uploads/2014/12/BiH-NAP-ENG.pdf>> accessed 3 October 2018 (hereinafter the Second NAP).

They have been praised by the UN on many occasions for their success.<sup>110</sup> Bosnia's two NAPs not only recognised the relevant WPS resolutions but also linked those resolutions to international human rights law documents, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979 and the Beijing Conference Declaration of 1995.<sup>111</sup> The WPS agenda has not been considered as an isolated area and its relationship with other international law sources has been correctly recognised in the Bosnian NAPs. The NAPs have been regarded as a response to Bosnia's obligations under international law.

The first NAP had eight goals: the participation of women in decision-making processes,<sup>112</sup> the participation of women in military and police forces,<sup>113</sup> the deployment of women in peacekeeping operations,<sup>114</sup> fighting human trafficking,<sup>115</sup> demining,<sup>116</sup> assisting civilian victims of war – women and girls,<sup>117</sup> organising the training of civil servants to implement Resolution 1325,<sup>118</sup> and cooperation with international and non-governmental organisations to implement Resolution 1325.<sup>119</sup> The same aims were also adopted in the second NAP of Bosnia and Herzegovina.

Any analysis regarding the achievements of any NAP should start by looking at its preparation process. In Bosnia and Herzegovina, the relevant literature seems in consensus on the point that during the preparation of the first NAP of Bosnia and Herzegovina, government representatives cooperated effectively with civil society to form the NAP.<sup>120</sup> These consultations and coalition took one year.<sup>121</sup> These long engagements with civil society members were useful for persuading the government to engage with a range of issues which concerned women. The Bosnian NAPs were 'home-made product(s)'<sup>122</sup> for Bosnian society.

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<sup>110</sup> See Ankica Tomić, 'Gender Mainstreaming of the Security Sector in Bosnia and Herzegovina: From the Policy Papers to Reality' (2015) 14 *The Quarterly Journal* 87.

<sup>111</sup> First NAP (n 108) 6-7.

<sup>112</sup> *ibid* 9.

<sup>113</sup> *ibid* 11.

<sup>114</sup> *ibid* 15.

<sup>115</sup> *ibid* 16.

<sup>116</sup> *ibid* 18.

<sup>117</sup> *ibid* 18.

<sup>118</sup> *ibid* 20.

<sup>119</sup> *ibid* 20.

<sup>120</sup> McMinn and O'Rourke (n 104) 24. See also Tomić (n 110) 91.

<sup>121</sup> Tomić (n 110) 91.

<sup>122</sup> *ibid*.

In relation to the content of Bosnia's two NAPs, both NAPs displayed only numerical tables by which to assess the achievements of the state. This actually leads us to a discussion of 'descriptive representation vs substantive representation'.<sup>123</sup> Does an increase in the number of women (descriptive representation) always end in the inclusion of women's interests on the agenda (substantive representation)? Clearly, there is a need to connect the numbers with gender transformative changes. However, the quantifiable indicators have not been translated into the real effects of the numbers in both Bosnian NAPs.

As stated above, Otto warned feminists to evaluate every success by the consequences of that success.<sup>124</sup> For example, if the integration of women into police or military forces is going to result in women's segregation or misbehaviour in order to be 'accepted' by their male counterparts as a 'colleague',<sup>125</sup> then it is hard to call this integration a success. The existing approach (numerical plans) in the NAPs fails to resolve the accord between presence and participation.

Another serious weakness of the Bosnian NAPs is that rather than a gender mainstreaming, NAPs adopt a women-centred focus. Increasing the number of women in decision-making processes is presented as gender justice within the state mechanisms in Bosnia and Herzegovina. Such an approach falls short of analysing the reasons behind the vulnerabilities of women in a (post-)conflict society and fails to comprehend the reasons why women's political participation was far lower than that of men *in the first place*. Difficulties arise when women are accepted as 'inherently vulnerable' without making a gender-based analysis of the vulnerability.

This vulnerability language can be seen in the NAPs. For example, the first Bosnian NAP aimed to assist civilian victims of war by protecting women from sexual violence.<sup>126</sup> There is no reference to men or boy (civilian) sexual violence victims of the conflict. Moreover, as Björkdahl and Selimovic remarked, although women's participation was urged in the NAPs, the consequence of this integration has been considered to create 'unwanted' consequences

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<sup>123</sup> See Hanna F. Pitkin, *The Concept of Representation* (University of California Press 1967); Karen Celis *et al.*, 'Rethinking Women's Substantive Representation' (2008) 44 *Representation* 99; Karen Celis and Sarah Childs, 'Introduction: The Descriptive and Substantive Representation of Women' (2008) 61 *Parliamentary Affairs* 419. See also Melissa S. Williams, *Voice, Trust, and Memory: Marginalized Groups and the Failings of Liberal Representation* (Princeton University Press 1998).

<sup>124</sup> Otto (n 49) 99.

<sup>125</sup> Jennings (n 86) 6.

<sup>126</sup> First NAP (n 108) 18.



for women's role in the 'private' sphere "where women still have the main responsibility for family life".<sup>127</sup> Björkdahl and Selimovic claimed that this is why the first NAP sought to give "support to activities on harmonization of professional and family life to engage as many women in decision-making positions"<sup>128</sup> with a conservative focus.<sup>129</sup>

If the criticisms raised regarding the Bosnian NAPs are looked at carefully, these criticisms both give an insight into the criteria which would be effective for developing gender mainstreaming within states and expose the problems of the UN SC WPS agenda itself. Björkdahl and Selimovic's analysis did not consider the weaknesses underpinning the WPS agenda as a cause which is revived in national implementations. They preferred to attribute the failure to Bosnia and Herzegovina for providing "the backdrop for translating the global narrative of WPS into the Bosnian Action Plan for the implementation of 1325".<sup>130</sup> There are two limitations of this evaluation. First, it might assume that the WPS agenda is a completely sufficient and effective agenda in providing mechanisms to integrate women into decision-making processes rather than emphasising the lack of 'gender' mainstreaming in those resolutions. Second, the success of any NAP becomes dependent on the extent to which it applies to the agenda of the WPS. However, under such an approach, no NAP can go beyond the WPS agenda in order to bring new and creative solutions for women's active role in societies.

So, for instance, the success of an NAP should be attributed to the aim of the 'elimination of militarism or armament' even though the WPS agenda avoids such a policy. Although states have the main responsibility in case of any failure to integrate gender mainstreaming within their mechanisms, this mainstreaming should not *only* be dependent on the WPS agenda terms. This is because, as the analysis above showed, the SC as an institution is not providing a site of transformative feminist engagement.<sup>131</sup> States should go beyond the protection, participation and leadership mechanisms put forward in the resolutions in order to provide gender transformative justice. In contrast to what Katrina Lee-Koo claimed,<sup>132</sup> this section argues that a NAP's success does not *only* depend on its commitment to the WPS

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<sup>127</sup> Björkdahl and Selimovic (n 2) 325.

<sup>128</sup> First NAP (n 108) 23.

<sup>129</sup> Björkdahl and Selimovic (n 2) 325.

<sup>130</sup> Björkdahl and Selimovic (n 2) 316.

<sup>131</sup> Niamh Reilly, 'How Ending Impunity for Conflict-Related Sexual Violence Overwhelmed the UN Women, Peace, and Security Agenda: A Discursive Genealogy' (2018) 24 *Violence Against Women* 631, 646.

<sup>132</sup> Katrina Lee-Koo, 'Implementing Australia's National Action Plan on United Nations Security Council Resolution 1325' (2014) 68 *Australian Journal of International Affairs* 300, 301.

agenda; its success *also* depends on its criticisms of the WPS agenda regarding gender stereotypes, the victimization of women and/or the acceptance of militarism and armament as solutions to promote women's integration into peacebuilding processes. Such an agenda which goes beyond the WPS resolutions can be provided upon further integration with international human rights law.

### **3.3. Integration of International Human Rights Law Accountability Mechanisms to the WPS Agenda for Gender Transformative Justice**

Having discussed the SC's WPS agenda and looked at the domestic implementation in Bosnia and Herzegovina, it has been found that interventions of international security to the WPS agenda result in a counterproductive development by introducing a collective security approach to women, peace and security.<sup>133</sup> This section suggests that the accountability mechanisms under international human rights law can provide a human rights framework for the WPS agenda. With the adoption of General Recommendation No. 30 on Women in Conflict Prevention, Conflict, and Post-Conflict Situations (General Recommendation No. 30) in 2013,<sup>134</sup> the Committee on the Elimination of Discrimination of Women concretised the links between the CEDAW and the WPS agenda. This section engages with these very under-researched links and argues that accountability mechanisms under the CEDAW and the WPS resolutions should be integrated to provide gender transformative justice in post-conflict societies. Such an integrated approach can clarify and strengthen the legal status of WPS resolutions.

The main treaty reflecting the terms of the WPS Resolutions is the CEDAW.<sup>135</sup> SC Resolution 1325 has many obligations that are influenced by the CEDAW.<sup>136</sup> As UN Special Representative on Sexual Violence in Conflict Pramila Patten underlined, the CEDAW and the WPS agenda “share a common agenda that recognizes women's human rights and gender

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<sup>133</sup> Heathcote (n 52) 82.

<sup>134</sup> UN Committee on Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), General Recommendation No. 30 on Women in Conflict Prevention, Conflict, and Post-Conflict Situations (General Recommendation No. 30), CEDAW/C/GC/30, 1 November 2013 <<https://www.refworld.org/docid/5268d2064.html>> accessed 3 October 2018.

<sup>135</sup> UN General Assembly, Convention on the Elimination of All Forms of Discrimination against Women (18 December 1979), General Assembly Resolution 34/180 <<http://www.refworld.org/docid/3ae6b3970.html>> accessed 3 October 2018 (hereinafter the CEDAW).

<sup>136</sup> LSE Pro Bono Matters, 'Making the Normative Case: Implementing Security Council Resolution 1325 as part of a Legal Framework on Women, Peace and Security' (April 2015) <<http://www.lse.ac.uk/women-peace-security/assets/documents/2016/SC1325ProBono.pdf>> accessed 3 October 2018, 13.

equality as central to the maintenance of international peace and security’<sup>137</sup> This shared goal creates an ongoing ‘substantive synergy’ between these two legal frameworks.<sup>138</sup> Three goals of the WPS agenda (prevention, participation and protection) are the responses of the SC to international legal norms.<sup>139</sup>

Similar to SC Resolution 1325,<sup>140</sup> CEDAW’s article 7 obliges states to ensure that women participate in all decision-making processes.<sup>141</sup> To enable participation, CEDAW urges states to eliminate all mechanisms that lead to discrimination against women.<sup>142</sup> Gendered hierarchies and structural economic and social inequalities make women more vulnerable in conflict settings than men. To combat this situation and prevent this structural vulnerability (read: to provide gender transformative justice), CEDAW’s article 13 suggests a complementary measure. It proposes that economic and social life should be based on the principle of equality. This obligation might help the WPS agenda to prevent (sexual) violence against women and its impacts on women which are aggravated as a result of social and economic inequalities. Similarly, GR No. 30 urges states to take measures to provide gender equality and prevent violence against women in (post-)conflict situations.<sup>143</sup>

The integration of the accountability mechanisms under CEDAW and the WPS has been reaffirmed in the latest SC Resolution 2242 of 2015. After making a reference to General Recommendation No. 30, Resolution 2242 pointed out that there is a “complementary role for United Nations entities and regional organizations”.<sup>144</sup> In their article which ‘provides the first systematic review’ of both CEDAW and the WPS normative frameworks, Catherine O’Rourke and Aisling Swaine argue that such a complementary role can respond “to the concerns about the legal status and underenforcement of UN SC Resolution 1325 and to the

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<sup>137</sup> Pramila Patten, ‘Unlocking the Potential of CEDAW as an Important Accountability Tool for the Women, Peace and Security Agenda’ in Fionnuala Ní Aoláin *et al.* (eds), *The Oxford Handbook of Gender and Conflict* (OUP 2018) pp 171-184, 180.

<sup>138</sup> *ibid.*

<sup>139</sup> Aisling Swaine, ‘Practicing Women, Peace and Security in Post-Conflict Reconstruction’ in Matthew Saul and James A. Sweeney (eds), *International Law and Post-Conflict Reconstruction* (Routledge 2015) pp 66-94, 81

<sup>140</sup> UN Resolution 1325 (n 31) Preamble para 5.

<sup>141</sup> CEDAW (n 135) article 7.

<sup>142</sup> CEDAW (n 135) article 8.

<sup>143</sup> General Recommendation No. 30 (n 134) articles 29-33.

<sup>144</sup> UN SC Resolution 2242 (13 October 2015) UN Doc S/RES/2242, Preamble. For a critical reading of this resolution, see Fionnuala Ní Aoláin, ‘The ‘war on terror’ and Extremism: Assessing the Relevance of the Women, Peace and Security Agenda’ (2016) 92 *International Affairs* 275; Sophie Giscard d’Estaing, ‘Engaging Women in Countering Violent Extremism: Avoiding Instrumentalisation and Furthering Agency’ (2017) 25 *Gender and Development* 103.

fragmentation of international law norms for gender equality”.<sup>145</sup> O’Rourke and Swaine find out that UNSC adopted 947 resolutions from the adoption of the first resolution under the WPS agenda until 2016 when they concluded their research. According to the authors,

“Of these (947 resolutions), 10 mention the Convention (CEDAW), six of which are WPS resolutions. Noteworthy is that the Convention is not referenced consistently in all of the WPS resolutions; it is even less consistent in the resolutions on CRSV (conflict-related sexual violence).”<sup>146</sup>

These findings illustrate the fragmentation in international law, especially in relation to women, peace and security. SC fails to take a holistic approach and neglects the close links between CEDAW and the WPS agenda. Inconsistent and seldom references to the CEDAW prevent the WPS agenda from gaining a human rights position.

It becomes important to ask what legal implications might occur as a result of the integration of the WPS agenda into international human rights law. Contrary to the WPS Resolutions, CEDAW proposed accountability mechanisms from the beginning. *Periodic review*: the CEDAW Committee examines the legislative, judicial, administrative or other measures adopted by state parties.<sup>147</sup> For instance, the CEDAW Committee used this mechanism to criticise Colombia because it excluded women from the peace process.<sup>148</sup> *Compliance mechanism under the Optional Protocol*: the Protocol enables individuals to bring claims to the Committee. This enables women to take an action against a violent state. However, to date, this mechanism has not been used.<sup>149</sup> *Inquiry*: the CEDAW Committee can make inquiries when and if it receives ‘reliable information’ regarding a systematic violation. This has been used to inquire into the Mexican femicide issue.<sup>150</sup> *International Court of Justice*: states may bring a case in the circumstance of a violation in another state (with relation to the interpretation or application of the CEDAW).<sup>151</sup>

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<sup>145</sup> Catherine O’Rourke and Aisling Swaine, ‘CEDAW and the Security Council: Enhancing Women’s Rights in Conflict’ (2018) 67 *International and Comparative Law Quarterly* 167, 194.

<sup>146</sup> *ibid* 195.

<sup>147</sup> CEDAW (n 135) article 18.

<sup>148</sup> For a specific discussion of this issue, see Cornelia Weiss, ‘Barely Begun: The Inclusion of Women as Peacemakers, Peacekeepers, and Peacebuilders in International Law and Practice’ in Cecilia Marcela Baillet and Kjetil Mujezinovic Larsen (eds), *Promoting Peace Through International Law* (OUP 2015) pp 274-296, 278-279.

<sup>149</sup> *ibid* 279.

<sup>150</sup> *ibid* 280.

<sup>151</sup> CEDAW (n 135) article 29.

Apart from CEDAW and its General Recommendation No. 30, the ICCPR has many obligations for states which can be found in the WPS agenda. The ICCPR obliges states to give the opportunity to every citizen to have a part in the conduct of public affairs.<sup>152</sup> In General Comment (GC) No. 28, the UN Human Rights Committee (HRC) required specific measures to be taken by states during armed conflicts to protect against gender-based violence.<sup>153</sup> The UN HRC (and its GC No. 28), in addition to CEDAW (and its GR No. 30), as international law resources which are binding on state-parties,<sup>154</sup> provide clear protection and participation mechanisms for women. This makes the WPS Resolutions connected to the international human rights law framework and gives resolutions a binding and obligatory status.

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (the Optional Protocol) is also an important instrument which can be effective in the implementation of the UN SC WPS agenda. The CEDAW Committee in the General Recommendation No. 30

“reiterates the need for a concerted and integrated approach that places the implementation of the Security Council agenda on women, peace and security into the broader framework of the implementation of the Convention and its Optional Protocol.”<sup>155</sup>

The Optional Protocol was adopted by the UN General Assembly in 1999, twenty years after the adoption of the Convention. As of writing<sup>156</sup> there are 112 state parties to the instrument. The Optional Protocol contains both an individual complaints procedure<sup>157</sup> and an inquiry procedure.<sup>158</sup> Although these additional mechanisms ameliorate the structural weaknesses associated with the Convention due to the lack of enhanced

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<sup>152</sup> ICCPR (n 96) article 25.

<sup>153</sup> UN Human Rights Committee, CCPR General Comment No. 28: Article 3 (The Equality of Rights between Men and Women), UN Doc CCPR/C/21/Rev.1/Add.10 (2000) (hereinafter GC No. 28) <<http://www.refworld.org/docid/45139c9b4.html>> accessed 3 October 2018, para 8.

<sup>154</sup> (189 states are parties at the time of writing, October 2018).

<sup>155</sup> UN General Assembly, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, 6 October 1999, United Nations, Treaty Series, vol. 2131, p. 83, available at: <https://www.refworld.org/docid/3ae6b3a7c.html> [accessed 21 September 2019]

<sup>156</sup> As of 21 September 2019.

<sup>157</sup> Article 2, the Optional Protocol to the CEDAW.

<sup>158</sup> Article 8, the Optional Protocol to the CEDAW.

monitoring mechanisms,<sup>159</sup> the Committee has not actively started to use these mechanisms.

The CEDAW Committee's encouragement for an integrated approach in international law is a significant development. When the State Parties to the CEDAW Convention adopt National Action Plans as a requirement under the agenda of the SC WPS, more integration with the Convention and the Optional Protocol might occur as a response to the General Recommendation No. 30. Bosnia and Herzegovina constitutes an interesting case on this issue: Bosnia and Herzegovina started implementing the CEDAW Convention 1993 and signed the Optional Protocol in 2002. In the first National Action Plan which was adopted in 2010, three years earlier than General Recommendation No. 30, Bosnia and Herzegovina referred to the CEDAW Convention and the Optional Protocol while mentioning the international legal documents that Bosnia and Herzegovina considers itself responsible for.<sup>160</sup>

While it is important that Bosnia and Herzegovina links the CEDAW Convention and the Optional Protocol with the WPS agenda, this interaction remains unaccountable. As of writing,<sup>161</sup> the CEDAW Committee has not benefitted from the individual petition and inquiry procedures for the violations emerging specifically from conflict. As Catherine O'Rourke and Aisling Swaine pointed out, the adoption of General Recommendation 30 has not increased use of the Optional Protocol in order to protect the rights guaranteed by CEDAW to women and girls in conflict and post-conflict settings.<sup>162</sup>

In addition to the Optional Protocol, the use of the Council of Europe (CoE) Convention on Preventing and Combating Violence against Women and Domestic Violence (known as the Istanbul Convention) in Bosnia and Herzegovina presents a complicated picture. As in all post-conflict countries, in Bosnia and Herzegovina too domestic violence has become an area of focus in the peacebuilding process. For post-conflict countries, in order to tackle with the increase in the domestic violence against women, the Istanbul Convention is a useful tool since it provides a strong emphasis on states' obligations 'to

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<sup>159</sup> O'Rourke and Swaine (n 145)182-183.

<sup>160</sup> First NAP, 6-7.

<sup>161</sup> As of September 2019.

<sup>162</sup> Catherine O'Rourke and Aisling Swaine, 'WPS and CEDAW, Optional Protocol, and General Recommendations' in Sara E. Davies and Jacqui True (eds) *The Oxford Handbook of Women, Peace and Security* (Oxford University Press 2019) 669-679, 672.

prevent, investigate, punish and provide reparation for acts of violence.<sup>163</sup> The Istanbul Convention also encourages states to ‘take the necessary legislative or other measures (...) to provide for medical and forensic examination, trauma support and counselling for victims.’<sup>164</sup> The Convention is praised for codifying and further developing CEDAW standards.<sup>165</sup> While CEDAW Convention does not explicitly prohibit violence against women, the Istanbul Convention explicitly defines violence against women as a violation of human rights and a form of discrimination against women.<sup>166</sup> The provisions of the Convention cover a wide range of important areas,

‘such as criminal justice responses, the provision of social support measures to victims, and the raising of awareness within the society as a whole of the issues involved in domestic violence.’<sup>167</sup>

Acts of domestic violence have been criminalized in Bosnia and Herzegovina via several statutes<sup>168</sup>: the Family Law (2005); Law on Protection from Domestic Violence (2005); the Strategy on Prevention and Combating Family Violence (2009-2011). Besides the domestic legislation, Bosnia and Herzegovina was required to recognize domestic violence as a violation of human rights as a response to Council of Europe (CoE) membership requirements and signed and ratified the Istanbul Convention in 2013 and entered into force in 2014. Despite the establishment of legislation, however, a lack of resources, training and knowledge among court and service providers hinder the implementation of these instruments.<sup>169</sup> As a result of this, the only actors providing the majority of services for survivors of domestic violence in Bosnia and Herzegovina are NGOs.<sup>170</sup> However, the

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<sup>163</sup> Council of Europe, *The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*, November 2014, ISBN 978-92-871-7990-6, available at: <https://www.refworld.org/docid/548165c94.html> [accessed 24 October 2019], art 5.

<sup>164</sup> *ibid* art 25.

<sup>165</sup> Dubravka Šimonović, ‘Global and Regional Standards on Violence Against Women: The Evolution and Synergy of the CEDAW and Istanbul Convention’ (2014) 36 *Human Rights Quarterly* 590, 605.

<sup>166</sup> *ibid* 590.

<sup>167</sup> Ronagh J. A. McQuigg, ‘What Potential does the Council of Europe Convention on Violence against Women Hold as regards Domestic Violence?’ (2012) 16 *International Journal of Human Rights* 947, 960.

<sup>168</sup> Lisa R. Muftić and Jennifer R. Cruze, ‘The Laws Have Changed But What About the Police? Policing Domestic Violence in Bosnia and Herzegovina’ (2014) 20 *Violence Against Women* 695, 698.

<sup>169</sup> Lisa R. Muftić, Irma Deljić and Ashley K. Fansher, ‘A Nationwide Evaluation of Services Provided to Domestic Violence Survivors at Shelters in Bosnia-Herzegovina’ (2019) 34 *Journal of Interpersonal Violence* 667, 669.

<sup>170</sup> *ibid*.

extent to which these legal regulations and commitments are and can be implemented by the NGOs is open to question.<sup>171</sup>

On the other hand, some developments occurred in relation to the implementation of the Istanbul Convention after the research was completed for this thesis. A project called 'Raising Bosnia and Herzegovina's Institutional Capacity to Prevent and Combat Violence against Women and Domestic Violence' was started in February 2019 by the CoE in order to establish a functional system of data collection and to analyse gender-based violence and femicide cases in Bosnia and Herzegovina.<sup>172</sup> Similarly, in July 2019 CoE published a report named 'Administrative Data Collection on Violence Against Women and Domestic Violence in Bosnia and Herzegovina In Line with Istanbul Convention Standards'.<sup>173</sup> This very recent focus on the data collection on violence against women might raise a general awareness on domestic violence. It remains to be seen how these developments would create an interaction between the WPS agenda and the Istanbul Convention in the case of Bosnia and Herzegovina.

As seen, the WPS agenda has many connections with international law. This makes the WPS Resolutions open to compliance mechanisms under international human rights treaties. Although the mechanisms have not been used efficiently so far, they have the potential to improve the situation of women in conflict and post-conflict settings in party states. The lack of any strong and 'gender-friendly' accountability mechanisms in the Resolutions disallows gender transformative justice. To provide gender transformative justice, the links between international human rights law treaties and the WPS agenda should be fully explored and the accountability mechanisms of the conventions should be efficiently used by state parties.

#### 4. Conclusion

The UN SC is one of the main actors in the processes of post-conflict reconstruction. It is legally authorised under the UN Charter to maintain international peace and security and it

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<sup>171</sup> See Chapter 8.2.

<sup>172</sup> For the project 'Raising Bosnia and Herzegovina's Institutional Capacity to Prevent and Combat Violence against Women and Domestic Violence' see <https://www.coe.int/en/web/genderequality/raising-bosnia-and-herzegovina-s-institutional-capacity-to-prevent-and-combat-violence-against-women-and-domestic-violence-2019->.

<sup>173</sup> For the report 'Administrative Data Collection on Violence Against Women and Domestic Violence in Bosnia and Herzegovina In Line with Istanbul Convention Standards' see <https://rm.coe.int/administrative-data-collection-on-violence-against-women-and-domestic-/1680966db3>.



can take significant measures (including the use of force) to achieve this goal. That is why the WPS resolutions have been enthusiastically welcomed by feminists when women became a ‘concern’ of the SC. Many studies have been written regarding the successes and failures of the SC’s WPS agenda. However, researchers have not treated the potential transformative role of the WPS agenda in much detail and have not considered it as a potential means to provide gender transformative justice.

To fill this gap, this chapter aimed to apply the model of ‘gender transformative justice’ of the thesis. The chapter argued that the SC WPS agenda is a long way away from transforming the roles of women in conflict and post-conflict societies and from addressing the root causes of the wartime violence against women. The SC remains restricted by the goal of conflict resolution and does not challenge the existing gendered hierarchies in the societies in question. One of the most significant problems is that, under the WPS agenda, women have been regarded as the only group who are adversely affected by armed conflicts. This might be true in regard to the disproportionate sexual violence against women. However, all the policies and measures have been based on this argument. All the discourse in the WPS Resolutions is based on the vulnerabilities of women to sexual violence. This creates a ‘victimisation’ of women and makes it even harder to transform the perception from ‘victims’ to ‘actors’. In addition, this discourse takes sexual violence as a ‘woman issue’ rather than a gender problem. It has not been addressed by the SC how structural, economic, and social inequalities are worsening women’s situations after sexual violence incidences.

To provide gender transformative justice, the chapter has considered the NAPs as important tools. However, after a thorough analysis of the NAPs of Bosnia and Herzegovina, it has concluded that the SC’s dilemma between descriptive representation and substantive representation appears in the NAPs as well. NAPs became numerical tables without targeting a specific goal, or without analysing the impact of the numbers on the real lives of women. One of the most important findings of the chapter has been that victim language, the overgeneralization of women’s issues as gender issues, and the lack of a language of sexual violence against men and boys are echoed in the NAPs. To provide gender justice, the NAPs should go beyond the prescribed solutions under the WPS resolutions and should even challenge the WPS agenda for its silence on militarism and armament.

Rape against men and boys is absent in the resolutions. The WPS agenda considers sexual violence as a crime committed for sexual and biological reasons in war times. The structural reasons which result in sexual violence against women and men are not identified. Without a deep analysis of the reasons, the measures and solutions remain far from providing gender transformative justice for male and female victims of wartime violence. Worse, the SC has presented further militarism and armament as a solution to provide an agency role for women. This is why the SC has been correctly criticised by scholars for engaging selectively with women's rights and for promoting feminist ideas as long as these ideas fit in with its own institutional agenda and interests.

Some recommendations have been provided in the chapter. First, the SC needs to integrate its WPS agenda within the international human rights law framework. To provide gender transformative justice, the SC should reveal the connections and links with international law to make the WPS resolutions open to compliance mechanisms provided under, for example, CEDAW. This would bring additional accountability mechanisms to provide the integration of women in peacebuilding processes as actors. Second, the SC needs to respond to real life problems of women to implement gender transformative justice. For this aim, the SC needs to engage with more women of different levels of social, economic and political status to figure out the impact of the WPS Resolutions and their domestic implementations in the real world.

Having analysed the extent to which the UN SC-originated law on women, peace and security has been gender transformative, now the thesis turns to look at the international legal framework on reparations. The reparation mechanism has been the most developed mechanism under international law among transitional justice mechanisms. By bringing the international legal framework and domestic application of reparations, the next chapter continues scrutinising whether international law provides gender transformative justice for post-conflict societies.

## CHAPTER 5: CONCEPTUAL AND LEGAL FRAMEWORK OF GENDER TRANSFORMATIVE REPARATIONS

### 1. Introduction

Reparation mechanisms, as one of the transitional justice mechanisms, are intended to “repair or redress the impact of harm to provide remedy for the systematic violation of human rights commonly associated with armed conflict”.<sup>1</sup> Although reparations have been characterised as “the most directly victim-focused” of existing transitional justice mechanisms,<sup>2</sup> much less attention has been given to reparation mechanisms compared with prosecutions or truth commissions.<sup>3</sup> Despite this lower attention, reparations have been expanded and elaborated in both theory and practice so to include different forms (individual and collective) and types (material and symbolic). This chapter looks at these different forms and types of reparations by asking the question of how gender transformative justice can be provided through these mechanisms. The chapter argues that in order to provide gender justice, reparation mechanisms should be designed with a gender transformative justice approach.

In section 2, the development of the reparations mechanisms under international law is discussed. By bringing forward the international legal frameworks for reparations and the right to a remedy, it is illustrated that an urge for transformative reparations has emerged in these frameworks. With a feminist intervention, the meaning and scope of gender transformative reparations have also started to be concretised. After introducing the reparations framework under international law, in section 3, women’s expectations from reparations mechanisms are provided by engaging with the real-life experiences. Such an engagement justifies the requirement for gender transformative reparations. In section 4, the chapter turns to look at the case study of the thesis. Domestic application of the international legal frameworks in the case of Bosnia and Herzegovina is scrutinised in this section. It is

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<sup>1</sup> Fionnuala Ní Aoláin, Catherine O’Rourke and Aisling Swaine, ‘Transformative Reparations for Conflict-Related Sexual Violence: Principles and Practice’ (2015) 28 *Harvard Human Rights Journal* 97, 109.

<sup>2</sup> UN Women, ‘A Window of Opportunity: Making Transitional Justice Work for Women’ (2<sup>nd</sup> Edition, 2012) <<http://www.unwomen.org/~media/Headquarters/Attachments/Sections/Library/Publications/2012/10/06B-Making-Transitional-Justice-Work-for-Women.pdf>> accessed 3 October 2018, 16.

<sup>3</sup> Pablo de Greiff, ‘Introduction: Repairing the Past: Compensation for Victims of Human Rights Violations’ in Pablo de Greiff (ed.), *Handbook of Reparations* (OUP 2006) pp 1-18, 1.

argued that, although there are gender transformative steps and initiatives in Bosnia and Herzegovina in the transition process, these steps remain unofficial. In addition, the section explores how the domestic laws on reparations pose a risk of reproducing patriarchal, militarist, and masculine traditional norms and hinder gender transformative justice.

## 2. Reparation Mechanisms: From Transitional Justice Context to Gender Transformative Justice Context

In international law, a right to reparation has been established without any question.<sup>4</sup> Reparations can be provided by two authorities in law. The first authority is the judiciary. Under international law, a court can order reparation which includes the following forms: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.<sup>5</sup> There are many treaties which specifically accommodate a right to an effective remedy<sup>6</sup> other than the declarations regulated *per se* for reparations.<sup>7</sup> Although these forms of reparations are crucial and beneficial for the individual victims, throughout this chapter, I concur with the scholars who claim that after massive and systematic human rights violations, it is highly unlikely that the legal system of a post-conflict state will be able to provide reparations effectively.<sup>8</sup> From a gender transformative justice perspective, the legal system of a post-conflict state is often unlikely to challenge structural violence and root causes of the violence

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<sup>4</sup> For a comprehensive analysis of the right to reparation in international law, see Richard Falk, 'Reparations, International Law, and Global Justice: A New Frontier' in Pablo de Greiff (ed.), *Handbook of Reparations* (OUP 2006) pp 478-503.

<sup>5</sup> UN 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 and proclaimed by General Assembly Resolution A/RES/60/147 of 21 March 2006) (hereinafter Basic Principles and Guidelines) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/496/42/PDF/N0549642.pdf?OpenElement>> accessed 3 October 2018, arts 19, 20, 21, 22, 23.

<sup>6</sup> See Universal Declaration of Human Rights (adopted 10 December 1948) 217 E (III) art 8; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) arts 2(3), 9(5), 14; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 (CAT) art 14; International Convention on the Elimination of All Forms of Racial Discrimination (adopted 7 March 1966, entered into force 4 January 1969) 660 UNTS 195 (ICERD) art 6; American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123 (ACHR) art 10; Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 50; Rome Statute of the International Criminal Court (17 July 1998) UN Doc A/CONF. 183/9 of 17 July 1998, entered into force 1 July 2002.

<sup>7</sup> Basic Principles and Guidelines (n 5); Nairobi Declaration on Women's and Girls' Right to A Remedy and Reparation (2007) <[https://www.fidh.org/IMG/pdf/NAIROBI\\_DECLARATIONeng.pdf](https://www.fidh.org/IMG/pdf/NAIROBI_DECLARATIONeng.pdf)> accessed 3 October 2018.

<sup>8</sup> Pablo De Greiff, 'Justice and Reparations' in Pablo De Greiff (ed.), *Handbook of Reparations* (OUP 2006) pp 451-477, 454. See also Pamina Firchow, 'Must Our Communities Bleed to Receive Social Services? Development Projects and Collective Reparations Schemes in Colombia' (2013) 8 *Journal of Peacebuilding and Development* 50.

against women in the society. I argue that in order to provide gender transformative justice, a second authority, which is the administrative authorities providing individual/collective and material/symbolic reparations, needs to be *complementary* to the judicial remedies.

In international law, 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 (the Basic Principles and Guidelines) of 2005 were the first document in terms of regulating the right to a reparation in and of itself after having been discussed since 1989 by the UN Human Rights Commission (UNHRC) and its Sub-commission on the Promotion and Protection of Human Rights. This document recognises the right to a reparation for victims of “gross violations of international human rights law and serious violations of international humanitarian law”.<sup>9</sup> However, the document fails to fully define and clarify what these violations are. According to Marten Zwanenburg, the absence of very explicit and precise definitions of gross violations of international human rights law and serious violations of international humanitarian law, in fact, creates a flexibility which enables legal practitioners to (re)interpret the document depending on developments in legal theory.<sup>10</sup>

The Basic Principles and Guidelines, in Articles 19 to 23, introduce the forms of reparations (restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition) and present particular principles to be taken into consideration regarding the amount or form of the reparations when decisions on reparation are given. The Basic Principles and Guidelines, despite being a soft law document, give “legal support to representatives and advocates of victims’ rights in national settings”.<sup>11</sup> Although the document has been a milestone for the right to a reparation in international law, from a gender transformative justice point of view, the Basic Principles and Guidelines remain very ‘transitional’, do not challenge structural violence in a society and do not offer specific remedies to the vulnerable (including women) whose situation is highly unlikely to change with judicial forms of reparation.

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<sup>9</sup> Basic Principles and Guidelines (n 5) Preamble.

<sup>10</sup> Marten Zwanenburg, ‘The Van Boven/Bassiouni Principles: An Appraisal’ (2006) 14 *Netherlands Quarterly of Human Rights* 641, 650.

<sup>11</sup> Jemma Garcia-Godos, ‘Victim Reparations in Transitional Justice: What is at Stake and Why’ (2008) 26 *Nordisk Tidsskrift for Menneskerettigheter* 111, 116.

The Nairobi Declaration on Women's and Girls' Right to A Remedy and Reparation (the Nairobi Declaration) was the first step in international law which recognised the necessity for a transformative change in the situations of women and girls as its aim. So, what is the importance of the Nairobi Declaration in international law on the right to reparation? What does it offer to women and girls different from the Basic Principles and Guidelines? Where can we locate the declaration within the theory of gender transformative justice? I now turn to discuss these questions.

The Nairobi Declaration has been regarded as “innovative and inspiring”<sup>12</sup> since it, first, diagnosed the problems in relation to the practice of reparations correctly. The Declaration acknowledges that women are disproportionately affected by armed conflicts as a result of “inequalities between women and men, girls and boys, that *predated the conflict*”.<sup>13</sup> It is highly crucial for the theory of gender transformative justice to see the continuum of violence pre-, during and post-conflict in order to diagnose the continuing problems and to offer solutions which go beyond short-term remedies.<sup>14</sup> Second, although the Basic Principles “addresses the issue of reparation for victims in general and does not deal in a distinctive manner with crimes of sexual violence”,<sup>15</sup> the Nairobi Declaration pays attention to this problem specifically. The Declaration points out that,

“reintegration and restitution by themselves are not the sufficient goals of reparations, since the origins of violations of women's and girls' human rights predate the conflict situation”.<sup>16</sup>

It stresses that “if crafted with gender-aware forethought and care”, reinsertion, satisfaction and the guarantee of non-recurrence can have reparative effects for women.<sup>17</sup> It holds that reparations “must aim to address the political and structural inequalities that negatively shape women's and girls' lives”.<sup>18</sup> The innovation and inspiration of the Nairobi Declaration come from its recommendations regarding reparation mechanisms which surpass the reparation mechanisms provided by the Basic Principles and Guidelines.

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<sup>12</sup> Valerie Couillard, ‘The Nairobi Declaration: Redefining Reparations for Women Victims of Sexual Violence’ (2007) 1 *International Journal of Transitional Justice* 444, 444.

<sup>13</sup> Nairobi Declaration (n 7) Preamble (emphasis added).

<sup>14</sup> See Chapter 2.

<sup>15</sup> Couillard (n 12) 448.

<sup>16</sup> Nairobi Declaration (n 7) art 3.

<sup>17</sup> Nairobi Declaration (n 7) Principle 3 (A).

<sup>18</sup> Nairobi Declaration (n 7) Principle 3 (H).

The Nairobi Declaration does not deny the significance of the reparation mechanisms put forward under international law. However, it does point out the weaknesses of these remedies in terms of reproducing the past gendered hierarchies and structural violence against women in the societies. Although it emphasises the need to craft these reparation mechanisms with gender-just forethought, it also observes the political and structural inequalities in the societies predating the conflict. The Nairobi Declaration offers a two-fold reparation system. The first is to re-arrange the existing reparation mechanisms through the lens of gender justice and the second is to create a 'battlefield' on which the political and structural inequalities can be dealt with.

The Nairobi Declaration is of great importance for gender transformative justice. This is because in order to provide gender transformative justice, *complementarity* of judicial and administrative mechanisms is necessary. The two-fold approach of the Nairobi Declaration corresponds to this need. According to the Declaration (Preamble para 11), continuums in the violence against women requires additional administrative remedies to be provided outside the courtrooms. Then, it is the necessary here to question what these administrative reparations can offer. How do they approach the problems of post-conflict countries? What can they offer to women which is different from what has been offered by judicial remedies?

There is a growing point of view which claims that in transitional justice mechanisms, the very focus on individual crimes and violations hinders us from seeing the structural violence which is above and beyond, but inextricably linked with, individual cases. It has been critically questioned by scholars whether individual violations mask the greater challenges such as structural violence, marginalisation, systematic discrimination, poverty and so on.<sup>19</sup> These may be the root causes of the conflict-related violence which illustrate a continuum for victims even during 'peacetime'.<sup>20</sup> Whichever approach we use while looking at the violence experiences of the victims directly affects which reparation mechanisms we offer. Whereas observing the violations on an individual basis requires individual reparations for victims, looking at the violations from a broader and structural point of view necessitates reparation programmes on a wider scale.

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<sup>19</sup> Priscilla B. Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (2<sup>nd</sup> Edition, Routledge 2011) 165.

<sup>20</sup> *ibid.* See also Chapter 3.

The literature on reparations seems to be divided into two opposite views. On the one hand, there are scholars who claim the importance of individual/judicial reparations since the victims demand *direct relief* in post-conflict societies.<sup>21</sup> On the other hand, scholars claim that focusing on the areas which have been affected by the violence directly and on the people who have been direct victims of the violence may hamper long-term peacebuilding efforts.<sup>22</sup> However, a third view, which the present researcher also defends, claims that to enable individual reparations, broad-based reparations programmes/administrative reparations should go hand in hand since “a reparations program that includes both individual and collective reparations is likely to be more sensitive”.<sup>23</sup> Despite the weaknesses and insufficiency of judicial institutions in many post-conflict societies,<sup>24</sup> there is also a crucial reason to defend the complementarity of the judicial and administrative reparation mechanisms: the strict connection between individual violence and structural violence. From a gender transformative justice point of view, the vulnerabilities of women go beyond the individual cases and have structural reasons which should be addressed by additional reparation mechanisms to provide discontinuity in violence.<sup>25</sup>

In the feminist literature on reparations, Ruth Rubio-Marin’s work and Fionnuala Ní Aoláin, Catherine O’Rourke and Aisling Swaine’s work looks at the wartime violence against women from the perspective of structural violence. They underlined the ‘continuum of violence’ and defended more comprehensive and structural solutions for women’s vulnerabilities in addition to judicial reparations mechanisms. Such an understanding overlaps with feminist approaches looking at the relationship between ‘peacetime’ and wartime violence against women.<sup>26</sup> This chapter works in parallel with these opinions and takes gender transformative justice as an approach and emphasises the interconnectedness between individual and structural violence. Now we turn to explore more closely this interconnectedness by elaborating the ways it occurs in real-life experiences. Examination of real-life experiences of women on-the-ground enables us to see how gender transformative justice is required in order to address the problems that women encounter in post-conflict societies.

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<sup>21</sup> Margaret Urban Walker, ‘Transformative Reparations? A Critical Look at a Current in Thinking about Gender-Just Reparations’ (2015) 10 *International Journal of Transitional Justice* 108, 123-124.

<sup>22</sup> Firchow (n 8) 54-55.

<sup>23</sup> Ruth Rubio-Marin and Pablo de Greiff, ‘Women and Reparations’ (2007) 1 *International Journal of Transitional Justice* 318, 336.

<sup>24</sup> Ruth Rubio-Marin, ‘Reparations for Conflict-Related Sexual and Reproductive Violence: A Decalogue’ (2012) 19 *William and Mary Journal of Women and the Law* 69, 79.

<sup>25</sup> See Chapters 2 and 3.

<sup>26</sup> See Chapter 3.



### 3. Experiences of Women Regarding Reparation Mechanisms in Post-Conflict Societies: The Interconnectedness of Individual and Structural Violence

A close examination of women's experiences concerning reparation mechanisms requires these remedies to be gender transformative and not to reproduce the gendered hierarchies and pre-existing inequalities in the processes of post-conflict reconstruction. In this chapter, I claim that gender transformative reparation needs to be based on two principles: First, it requires reparations to be implemented in a complementary way with the other transitional justice mechanisms, namely trials, truth commissions, and institutional reforms. For women, a reparation mechanism cannot carry any meaning unless it is complemented by the revealing of the truth or an apology by the authorities, or institutional reforms that would prevent recurrence. The second principle for gender transformative reparations is that reparation mechanisms should not reproduce the previous gendered hierarchies. In order not to do so, reparations should not build themselves on the former social, legal, and economic structures in the society which create unequal power relations. Instead, they should be vigilant not to reinforce the previous gendered hierarchies and should challenge the structural violence at each and every opportunity. I now seek to clarify these two principles of gender transformative reparations by bringing forward examples from different post-conflict experiences.

Regarding the complementarity principle, recent practice concerning the transitional justice experiences of different countries show that victims "hold indivisible, perhaps even simultaneous, rights to truth, justice and reparations after gross human rights violations".<sup>27</sup> One of the most striking and frequently cited examples is Argentina's Madres de Plaza de Mayo.<sup>28</sup> In this case, the mothers of the disappeared refused financial and memorial reparations<sup>29</sup> since they thought that the state was attempting to buy their silence and end their campaign for *trials*<sup>30</sup> with this money.<sup>31</sup> In many cases, reparation mechanisms are

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<sup>27</sup> Cath Collins, 'Truth-Justice-Reparations Interaction Effects in Transitional Justice Practice: The Case of the Valech Commission' in Chile' (2016) 49 *Journal of Latin American Studies* 55, 55.

<sup>28</sup> See José María Guembe, 'Economic Reparations for Grave Human Rights Violations: The Argentinean Experience' in Pablo de Greiff (ed.), *The Handbook of Reparations* (OUP 2006) pp 21-54.

<sup>29</sup> Claire Moon, 'Who'll Pay Reparations on My Soul?' Compensation, Social Control and Social Suffering' (2012) 21 *Social and Legal Studies* 187, 188.

<sup>30</sup> *ibid* 8.

<sup>31</sup> It would be interesting here to bring another interpretation of this refusal. Lisa J. Laplante and Kimberley Theidon claimed that for Argentinean mothers, refusal of the money was a choice that they could make. But for poorer victims of Peru such a reaction is less likely to be expressed. This is a good illustration of how intersectional identities shape the preference of the victims with regard to transitional justice mechanisms and

created without a truth commission at the beginning.<sup>32</sup> In such situations, victims and societies feel “a lack of respect in the presumption that a cash payment might be sufficient to make up for the pain” and they do not find reparations sufficient without an acknowledgement of what happened and without seeing perpetrators investigated.<sup>33</sup>

On the other side, simply acknowledging what happened or giving symbolic forms of reparation (such as apology, memorialisation) to victims without any tangible benefits are considered useless by the victims.<sup>34</sup> For instance, although the South African Truth and Reconciliation Commission (TRC) did bring the victims to the forefront and did manage to acknowledge the violations, the government failed to pay timely and sufficient reparations to the victims and this resulted in “political tensions that threaten the work of the truth commission and even demean its credibility and beneficial effects”.<sup>35</sup> Peru also experienced similar problems. More than two years after the truth commission presented its final report in 2003, the Peruvian government failed to implement the reparations; continued impunity for the perpetrators increased distrust of the government.<sup>36</sup>

Different cases confirm the fact that payment of reparations without complementing this mechanism with other transitional justice mechanisms is not what victims ask for. The crucial point is that victims are concerned about what the perceptions of the rest of the society would be. For instance, for the survivors of sexual violence, payment of reparations without an apology or an acknowledgement of the crimes or investigation of perpetrators creates an image in the society of ‘selling sex to the enemy’ in return for money which comes under the name of reparation. Reparations not supported by other mechanisms can even create detrimental consequences for women, which is entirely contrary to its aims.

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how these identities create different perceptions/meanings of justice for different victims. See Lisa J. Laplante and Kimberley Theidon, ‘Truth with Consequences: Justice and Reparations in Post-Truth Commission Peru’ (2007) 29 *Human Rights Quarterly* 228, 243.

<sup>32</sup> Hayner (n 19) 178.

<sup>33</sup> *ibid.*

<sup>34</sup> In a similar vein, Pablo de Greiff, who is one of the most crucial scholars in the literature of reparations, emphasises the necessity of ‘external coherence’ between transitional justice mechanisms. De Greiff holds the view that each mechanism satisfies another/different expectation of a post-conflict society. Thus, for instance, only truth-telling in the absence of reparations efforts can be perceived as ‘empty gestures’ by the victims. See de Greiff (n 3) 11.

<sup>35</sup> Laplante and Theidon (n 31) 241.

<sup>36</sup> *ibid.*

‘Comfort women’ are a significant example demonstrating the need for a sincere apology<sup>37</sup> which should be supported by the punishment of perpetrators and acknowledgement of the state responsibility under international law in addition to reparations. For decades, ‘comfort women’ rejected reparations from the Japanese government since they expected an apology and an acknowledgement of state responsibility. Although some forms of apology came after a long time, ‘comfort women’ found these apologies insincere since they were not complemented by “full acknowledgment of the responsibility”, “thorough and complete investigation of the crimes” and “memorials to commemorate the victims”.<sup>38</sup> As seen, the satisfaction of victims concerning their right to reparation cannot be held separate from the other transitional justice mechanisms. A gender transformative justice process should maintain coherence between these mechanisms and complement the reparation mechanisms with trials, truth commissions and with other reparation mechanisms.<sup>39</sup>

The second principle of a gender transformative programme is that the reparations should challenge structural violence and create reparation programmes through the lens of gender justice rather than reproducing the gendered hierarchies by ignoring the broader violations. It has been the concern of this thesis to illustrate the connection between the structural violence which goes beyond/before the conflict situations and individual violations which occur during conflicts.<sup>40</sup> Human rights violations in war have been considered as symptoms of deeper and broader pathologies of power relations in the societies.<sup>41</sup> Based on this, to transform the society and especially to transform the roles of women in a post-conflict

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<sup>37</sup> Apology is another reparation mechanism which is structured as ‘symbolic reparation’. See Brandon Hamber and Ingrid Palmay, ‘Gender, Memorialization, and Symbolic Reparations’ in Ruth Rubio-Marin (ed.), *Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations* (CUP 2011) pp 324-380; Brandon Hamber and Richard A. Wilson, ‘Symbolic Closure through Memory, Reparation and Revenge in Post-Conflict Societies’ (2002) 1 *Journal of Human Rights* 35; Kris Brown, ‘Commemoration as Symbolic Reparation: Narratives or Spaces of Conflict?’ (2013) 14 *Human Rights Review* 273; Ron Dudai, ‘Closing the Gap: Symbolic Reparations and Armed Groups’ (2011) 93 *International Review of the Red Cross* 783; Frederic Megret, ‘The International Criminal Court Statute and the Failure to Mention Symbolic Reparation’ (2009) *International Review of Victimology* 127; Stephanie Wolfe, *The Politics of Reparations and Apologies* (Springer 2014); Brandon Hamber, ‘Conflict Museums, Nostalgia, and Dreaming of Never Again’ (2012) 18 *Journal of Peace Psychology* 268.

<sup>38</sup> David Tolbert, ‘Japan’s Apology to South Korea Shows What Public Apologies Should (Not) Do’ *Huffington Post* (29 January 2016) <[http://www.huffingtonpost.com/david-tolbert/japans-apology-to-south-k\\_b\\_9111566.html](http://www.huffingtonpost.com/david-tolbert/japans-apology-to-south-k_b_9111566.html)> accessed 3 October 2018.

<sup>39</sup> Pablo de Greiff names this as ‘internal coherence’ of transitional justice: “Internal coherence refers to the relationship between the different types of benefits a reparations program distributes. Most reparations programs deliver more than one kind of benefit. These may include symbolic as well as material reparations, and each of these categories may include different measures and be distributed individually or collectively. Obviously, in order to reach the desired aims, it is important that benefits internally support one another.” de Greiff (n 3) 10-11 (emphasis in original).

<sup>40</sup> See Chapters 2 and 3.

<sup>41</sup> See Paul Farmer, *Pathologies of Power: Health, Human Rights, and the New War on the Poor* (University of California Press 2003).

society, gender transformative reparations should look beyond the individual violations and should not be part of unequal power relations by not challenging them.

For example, the relationship between individual violations and structural violence has been clear in the case of Nepal. Recent research has suggested that women suffer systematic discrimination in terms of economic, social and cultural rights in Nepal.<sup>42</sup> This shows that inequality and poverty are gendered. Any reparation mechanism would not be effective unless it addresses the specific vulnerability of women by paying collective-based reparations to them. Collective reparations may include, among others, land reforms, property rights, health and education. “Given the deaths and family separation engendered by conflict” women remain without land and property ownership after many conflicts.<sup>43</sup> As Ní Aoláin, O’Rourke and Swaine have suggested, a transformative approach to reparations would require amendments to the land and property rights of women in order to provide gender equality.

The most frequently cited example of gender transformative reparations was implemented in Morocco. Here, the Equity and Reconciliation Commission (2002-2003) departed from the precedent and “decided to apportion benefits among family members of the deceased victims in a way that departs from the sharia-based law of inheritance, giving a larger share of those benefits to women (40% as opposed to 12.5%) rather than to the eldest son”.<sup>44</sup> Moreover, the Commission recognised the different effects of the same crimes on women and men as a result of gendered hierarchies and stark discrimination in the society, and ordered extra compensation for female victims.<sup>45</sup> This case is significant since here reparation mechanisms challenged the previous law which clearly created gendered hierarchies and pathological power relations in the society.

According to Dyan Mazurana and Kristopher Carlson, compensating the damages of the victims and then sending them “back into societies that discriminate against and are violent to them based on their sex (...)” is insufficient.<sup>46</sup> Along similar lines, in order to activate the

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<sup>42</sup> Daniel Aguirre and Irene Pietropaoli, ‘Gender Equality, Development and Transitional Justice: The Case of Nepal’ (2008) 2 *International Journal of Transitional Justice* 356, 356.

<sup>43</sup> Ní Aoláin, O’Rourke and Swaine (n 1) 120.

<sup>44</sup> Ruth Rubio-Marin, ‘Introduction’ in Ruth Rubio-Marin (ed.), *Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations* (CUP 2011) pp 1-17, 17.

<sup>45</sup> Hayner (n 19) 173.

<sup>46</sup> Dyan Mazurana and Kristopher Carlson, ‘Reparations as a Means for Recognizing and Addressing Crimes and Grave Violations against Girls and Boys during Situations of Armed Conflict and under Authoritarian and

gender transformative potential of reparations, Rubio-Marin claimed that reparations need to “subvert, instead of reinforce, pre-existing structural gender inequalities”.<sup>47</sup>

The inextricable link between structural violence and individual violations in many cases is very clear. For instance, Beth Goldblatt pointed out that in the case of South Africa, Truth and Reconciliation offices were based in urban centres, which precluded rural women from reaching and contributing to the process.<sup>48</sup> Leaving aside getting gender transformative reparations, structural violence makes it even harder for these women to reach justice mechanisms to give testimonies. Similarly, in South Africa, there were a number of women to be paid reparations but did not have a bank account, so they had to use their husband’s account to deposit the money.<sup>49</sup> This made it impossible for them to exercise control over their money later on.<sup>50</sup>

This interconnectedness of the harms prohibits a hierarchy between the forms (individual and collective) and types (material and symbolic) of the reparations. Since individual violations are inextricably linked to structural violence from the gender transformative justice point of view, any individual reparation needs collective complementary reparations to be meaningful, or any material reparation requires also symbolic reparation to make sense and heal the wounds. Using the terms of de Greiff, both ‘internal and external coherence’ should be maintained among reparation mechanisms and transitional justice mechanisms in order to create “social, political and community belonging for the recipient”.<sup>51</sup> As the examples above have illustrated, the need for complementarity of the reparation mechanisms is also a technical matter. As Erin Daly and Jeremy Sarkin pointed out strikingly, a woman as a recipient of reparations “may get enough to buy a new refrigerator, but she still won’t have enough to pay for electricity to run it”.<sup>52</sup> Scholars who are strictly opposed to the idea of

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Dictatorial Regimes’ in Ruth Rubio-Marin (ed.), *Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations* (CUP 2011) pp 162- 214, 174.

<sup>47</sup> Rubio-Marin (n 44) 6.

<sup>48</sup> Beth Goldblatt, ‘Evaluating the Gender Content of Reparations: Lessons from South Africa’ in Ruth Rubio-Marin (ed.), *What Happened to the Women? Gender and Reparations for Human Rights Violations* (Social Science Research Council 2006) pp 48-91, 57.

<sup>49</sup> *ibid* 73.

<sup>50</sup> *ibid*.

<sup>51</sup> Brandon Hamber, ‘The Dilemmas of Reparations: In Search of a Process-Driven Approach’ in K. de Feyter *et al.* (eds), *Out of the Ashes: Reparation for Victims of Gross and Systematic Human Rights Violations* (Intersentia 2005) pp 135-150, 149.

<sup>52</sup> Erin Daly and Jeremy Sarkin, *Reconciliation in Divided Societies: Finding Common Ground* (University of Pennsylvania Press 2007) 236.

transformative reparations<sup>53</sup> need to take into consideration the indivisibility and interconnectedness of the harms.

Although Margaret Urban Walker is one of the scholars who have fiercely objected to the idea of transformative reparations,<sup>54</sup> in another paper<sup>55</sup> she connected structural violence with everyday violence against women in a very comprehensive way, which is a link in fact which gender transformative justice aims to underline. In her paper, Walker created the useful concept of “gender-multiplied violence”:<sup>56</sup>

Some forms of violent harm or loss precipitate further losses that *enlarge the impact of, and may end in the end be worse or less manageable than, the original violation or loss itself*. When the factors are social and biological ones that cause women to suffer more than their male counterparts would from particular acts of violence, or that render women vulnerable to *additional harms as a result of acts of violence or the consequences of such acts*, I refer to the harm as ‘gender-multiplied’ for women. Multipliers are the factors that predictably play roles in causing additional losses or additional exposure to violence. The *additional damage* may or may not be part of what is intended in the violent act. *The absence of intention to cause certain further harms or additional suffering, however, though relevant in a juridical context to assessing the nature of a crime, should not impede recognition of the need to repair of additional harms women suffer as consequences or sequels of violence.*<sup>57</sup>

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<sup>53</sup> Walker (n 21) 108. See also Lars Waldorf, ‘Anticipating the Past: Transitional Justice and Socio-Economic Wrongs’ (2012) 21 *Social and Legal Studies* 171.

<sup>54</sup> *ibid.*

<sup>55</sup> Margaret Urban Walker, ‘Gender and Violence in Focus: A Background for Gender Justice in Reparations’ in Ruth Rubio-Marin (ed.), *Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations* (CUP 2011) pp 18-62.

<sup>56</sup> Margaret Urban Walker analysed this concept not only from women’s perspective but also looked at the gender-multiplied violence that men are exposed to during conflict situations. Walker held: ‘So men experience sex- and reproduction-specific violence, as well as forms of abuse and torture that exploit men’s parental and familial love and responsibility. Men are forced to stand by when their parents, spouses, relatives, children are killed, beaten, raped, or tortured in front of them. Men are coerced or terrorized by threats to their families. Men suffer the trauma of seeing loved ones injured and suffer the shame of their incapacity to exercise culturally valued protective male roles. Men are also subject to grave psychic and physical costs and consequences of participation in combat, and in the atrocities and abuses they witness or commit under the pressures and expectations not only of political ideology and military discipline but of gender norms of manliness and male solidarity. Men, too, may face multiplier effects when they are victims of violence or loss, and the specific gendered trajectories of men’s being disabled, traumatized, displaced, impoverished, or sexually violated require investigation alongside and in comparison to women.’ *ibid* 57-58.

<sup>57</sup> *ibid* 52 (emphases added).

Walker admitted that structural violence may cause additional harms for women, and that any remedies for violations of women's human rights should also address this additional suffering "*as consequences or sequels of violence*". Even the reasons why women do not come forward in truth commissions or reparations mechanisms are because of the structural violence precluding them from accessing accurate information regarding transitional justice mechanisms. In addition, a "public environment that validates the victim and blames the assailant, and guarantees of confidentiality and security"<sup>58</sup> in courts are essential for women to be satisfied with reparations.

Here we also need to underline the significance of the identification of the different identities of women rather than assuming that all women experience conflicts in the same manner. Different intersectional identities such as "classes, ethnicities, castes, and religious groups, indigenous women, women who participate in oppositional political movements or are mobilized in combat, urban and rural women, married or unmarried women, women of different age groups and educational levels"<sup>59</sup> need to be addressed in the designation of gender transformative reparations. Each and every intersectional identity has a potential to address specific vulnerabilities for those identities and to reach out to the structural violence in the societies concerned. The intersectionality criterion<sup>60</sup> should also be a part of gender transformative reparations.

To give an example, Peru's Truth and Reconciliation Commission pointed out that "the war ran along class and racial lines" and almost half of the dead and disappeared came from rural areas.<sup>61</sup> Research has also illustrated that rural women in Peru were disproportionately influenced by the conflict<sup>62</sup> and rural women, in Peru and in any conflict state, are especially vulnerable to rape during conflicts.<sup>63</sup> Those most damaged by conflicts are often the same

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<sup>58</sup> *ibid* 45.

<sup>59</sup> *ibid* 55.

<sup>60</sup> The idea of intersectionality has also been claimed as a component of the theory of gender transformative justice *see* Chapter 2.

<sup>61</sup> Lisa J. Laplante, 'On the Indivisibility of Rights: Truth Commissions, Reparations, and the Right to Development' (2007) 10 *Yale Human Rights and Development Journal* 141, 153. *See also* for different numbers Jemima Garcia-Godos, 'Victim Reparations in the Peruvian Truth Commission and the Challenge of Historical Interpretation' (2008) 2 *International Journal of Transitional Justice* 63, 68.

<sup>62</sup> Wendy Lambourne and Vivianna Rodriguez Carreon, 'Engendering Transitional Justice: A Transformative Approach to Building Peace and attaining Human Rights for Women' (2016) 17 *Human Rights Review* 71, 73.

<sup>63</sup> *ibid* 72.

people who suffer poverty and inequality.<sup>64</sup> A shallow observation of cases of the rape of rural women on an individual basis would not allow us to see the reasons why especially these women were the victims of sexual violence. From a gender transformative justice perspective, in addition to paying for the damages done to these women, specific vulnerabilities should be addressed too. Root causes of the violations should be identified and the roles of women in the society need to be transformed by maintaining material/symbolic and individual/collective reparations programmes in a both externally and internally coherent manner.

Another criticism against the concept of gender transformative reparations is that they have been considered as bypassing or instrumentalizing “harmed individuals and groups by treating them as symptoms of a more serious or important justice issue”.<sup>65</sup> Underestimation of the harms to the victims has been the concern here and payment for the direct harms is asked to be prioritized. However, payment for direct violations can be also reinforcement of the discriminatory norms. As Rubio-Marin highlighted, many societies are structured in conformity with ‘the male-breadwinner model’, and women are mostly not well-educated or well-paid. A reparation mechanism which is based on the damages to victims would not be advantageous for women.<sup>66</sup>

Considering only the primary harms would fail to comprehend the “web of harms”<sup>67</sup> or the “domino effect”<sup>68</sup> of the harms. For instance, sexual violence victims are ostracized by their families, rejected by their husbands or shunned by their neighbours and societies.<sup>69</sup> In such a context, secondary harms may even precede the primary harms in consequence of the ‘gender-multiplied’ effects of the violations. The idea of gender transformative reparations

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<sup>64</sup> Lisa J. Laplante, ‘Transitional Justice and Peacebuilding: Diagnosing and Addressing the Socioeconomic Roots of Violence through a Human Rights Framework’ (2008) 2 *International Journal of Transitional Justice* 331, 336.

<sup>65</sup> Walker (n 21) 123.

<sup>66</sup> Ruth Rubio-Marin, ‘The Gender of Reparations in Transitional Societies’ in Ruth Rubio-Marin (ed.), *Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations* (CUP 2011) pp 63-120, 100. Although it seems very difficult to practice this suggestion in practice because of the technical reasons, Rubio-Marin offers that these women should be repaired on the basis of what they would have lost under a non-discriminatory system (page 101). See also Rubio-Marin and de Greiff (n 23) 332.

<sup>67</sup> Catherine O’Rourke, *Gender Politics in Transitional Justice* (Routledge 2013) 56-59.

<sup>68</sup> Colleen Duggan and Ruth Jacobson, ‘Reparation of Sexual and Reproductive Violence: Moving from Codification to Implementation’ in Ruth Rubio-Marin (ed.), *Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations* (CUP 2011) pp 121-161, 130.

<sup>69</sup> Rubio-Marin (n 24) 76.



does not come to light because of an ‘ambition’.<sup>70</sup> It emerges simultaneously with the emergence of an awareness on the interconnectedness of harms that women suffer in (post-)conflict societies. From a gender transformative justice point of view, a reparations programme should be away from reproducing gender inequalities by addressing and challenging the connection points between structural and everyday violence against women during post-conflict reconstruction processes.

#### **4. Examination of the Reparations Mechanisms in Bosnia and Herzegovina through a Gender Transformative Justice Approach**

In this section, I look at the reparation mechanisms in Bosnia and Herzegovina, from the Dayton Peace Agreement to the reparations initiatives of the civil society in Bosnia and Herzegovina. The main purpose in the section is to apply the theoretical framework of gender transformative justice set up in Chapters 2 and 3 to the case study and to answer the question about the extent to which the reparation mechanisms in Bosnia and Herzegovina have been transformative for women. The mechanisms analysed in this section are unofficial mechanisms. I argue that these unofficial mechanisms provided gender transformative justice in the field; therefore, they have been examined here for the purpose of the thesis. Although some gender-aware reparation programmes have been designed (and to a lesser extent have been implemented), there are fault lines in these mechanisms which reproduce and reinforce the gendered hierarchies in the society and recreate the national divisions and ethno-nationalist masculinities in Bosnian society.

One of the main goals of the Dayton Peace Agreement (DPA) of 1995 was to enable the minorities to return to Bosnia and Herzegovina in order to re-establish the multi-ethnic country that Bosnia and Herzegovina once was.<sup>71</sup> This goal has also shaped the reparation mechanisms: although the right to compensation was enunciated in the DPA, it has been

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<sup>70</sup> Pamina Firchow and Roger MacGinty suggested an opinion regarding where the idea of transformative reparations comes from: ‘They argued that the discussion in the reparation mechanism ‘fit squarely into the debate on the changing character of peacebuilding’. See Pamina Firchow and Roger MacGinty, ‘Reparations and Peacebuilding: Issues and Controversies’ (2013) 14 *Human Rights Review* 231, 234.

<sup>71</sup> Dayton Peace Agreement, General Framework Agreement for Peace in Bosnia and Herzegovina (21 November 1995) (hereinafter DPA) <<http://www.refworld.org/docid/3de495c34.html>> accessed 3 October 2018, Annex 7. Annex 7 of DPA states: ‘All refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them. *The early return of refugees and displaced persons is an important objective of the settlement of the conflict in Bosnia and Herzegovina.*’ (emphasis added).

largely disregarded “for fear that a refugee or displaced person’s ability to receive compensation might interfere with the primary goal of ethnic reintegration”.<sup>72</sup> Having access to this right would enable thousands of dislocated persons who wish to resettle, rather than return home, to do so.<sup>73</sup> In practice, the right to compensation has been ignored and a mechanism was created to allow war victims to claim repossession of their lost properties: the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC). Although it is beyond the scope of this thesis to evaluate the achievements and the failures of the CRPC, it is necessary to state here that the CRPC has been one of the two nationwide collective reparation mechanisms in Bosnia and Herzegovina. Although the restitution programme ignored a number of structural problems which discouraged the returns (such as discrimination against minorities, unemployment problems and violence against the displaced who sought to return<sup>74</sup>), 93% of 200,000 properties were returned to their pre-war owners by 2004. This can be an example to illustrate the fact that collectively-implemented reparations may provide more victims with remedies compared with judiciary-provided reparations. However, this house restitution process created no mechanism other than administrative reparations for returnees to help them to deal with their individual-based vulnerabilities upon their return.

The other Dayton-created reparation mechanism, the Human Rights Chamber<sup>75</sup> (the Chamber or HRC) demonstrated that individual and collective reparations should go hand-in-hand to create individual and collective transformation for the victims. The Chamber received more than 15,000 applications of which 6,243 were resolved in 2,619 decisions.<sup>76</sup> It had the authority to make both individual and collective decisions and to ask the Bosnian authorities to change or withdraw legislation or policies. If a decision was made on a similar case, the applicants were referred to the same measures which the Chamber had already

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<sup>72</sup> Eric Rosand, ‘The Right to Compensation in Bosnia: An Unfulfilled Promise and a Challenge to International Law’ (2000) 33 *Cornell International Law Journal* 113, 117.

<sup>73</sup> *ibid.*

<sup>74</sup> Frederiek de Vlaming and Kate Clark, ‘War Reparations in Bosnia and Herzegovina: Individual Stories and Collective Interests’ in Dubravka Zarkov and Marlies Glasius (eds), *Narratives of Justice In and Out of the Courtroom: Former Yugoslavia and Beyond* (Springer 2014) pp 163-185, 176.

<sup>75</sup> For more idea about Human Rights Chamber of Bosnia and Herzegovina, see Timothy Cornell and Lance Salisbury, ‘The Importance of Civil Law in the Transition to Peace: Lessons from the Human Rights Chamber for Bosnia and Herzegovina’ (2002) 35 *Cornell International Law Journal* 389; Ulrich Garms and Katharina Peschke, ‘War Crimes Prosecution in Bosnia and Herzegovina (1992-2002): An Analysis through the Jurisprudence of the Human Rights Chamber’ (2006) 4 *Journal of International Criminal Justice* 258; Manfred Nowak, ‘Reparation by the Human Rights Chamber for Bosnia and Herzegovina’ in K. de Feyter *et al.* (eds), *Out of the Ashes: Reparations for Victims of Gross and Systematic Human Rights Violations* (Antwerp Intersentia 2005) pp 245-288.

<sup>76</sup> de Vlaming and Clark (n 74) 178.

decided on to be undertaken by the responsible authorities.<sup>77</sup> The Chamber created a precedent in the Bosnian judiciary which is “important for the promotion of the rule of law in Bosnia and Herzegovina”.<sup>78</sup>

For gender transformative reparations, section 2 above argued that individual and collective reparations should complement each other in transitional justice processes. The Chamber’s decision on the Srebrenica disappearances confirmed this argument: in *Ferida Selimović and forty-eight others against the Republika Srpska* delivered on 7 March 2003, 49 applicants sought information about the fate and whereabouts of their missing loved ones. Since the Republika Srpska failed to provide the families with any information, the applicants alleged that they themselves were victims of human rights violations. The Chamber ordered the Republika Srpska to pay 4 million KM (around 2 million euro) to the Foundation of the Srebrenica-Potocari memorial and cemetery to cover the costs of the burial of and a memorial for the victims.<sup>79</sup> Although the amount ordered was high, this nevertheless created an outcry among the claimants that they had not received any individual reparation.<sup>80</sup>

An analysis of this decision through a gender lens shows that the decision was not transformative for women. Bosnia and Herzegovina was a masculine society in which mostly men were the breadwinners. Since the enforced disappearances had mostly targeted men, women and children were left without any economic support. Clearly, the vulnerabilities of women in this case predated the conflict situation. So, to transform the roles of the women, the reparations should have addressed the political and structural inequalities which negatively shaped women’s lives. However, the Chamber did not take into account the vulnerabilities of the women and so missed the opportunity to illustrate the gendered hierarchies in Bosnian society which made women exceedingly destitute because they were totally dependent on men to sustain their living. The decision was far away from being transformative for women since it did not address the strong connection between individual violence and structural violence. The decision of the Chamber would have been

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<sup>77</sup> *ibid.*

<sup>78</sup> J. David Yeager, ‘The Human Rights Chamber for Bosnia and Herzegovina: A Case Study in Transitional Justice’ (2004) 14 *International Legal Perspectives* 44, 48.

<sup>79</sup> de Vlaming and Clark (n 74) 178.

<sup>80</sup> See Carla Ferstman and Sheri P. Rosenberg, ‘Reparations in Dayton’s Bosnia and Herzegovina’ in Carla Ferstman, Mariana Goetz and Alan Stephens (eds), *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity: Systems in Place and Systems in the Making* (Martinus Nijhoff Publishers 2009) pp 483-513, 495.

transformative if it had ordered reparations to each claimant by connecting these vulnerabilities of the claimants with structural violence.

The International Criminal Tribunal for the former Yugoslavia (the ICTY) did not provide for reparations to victims in its statute or enact any kind of reparation in the Rule of Procedure and Evidence relating to domestic proceedings.<sup>81</sup> Also, the reparation mechanisms which the DPA put forward fell short of providing a gender-just reparation mechanism. The mechanisms which were provided by the DPA were a long way from understanding the needs of women during that reconstruction process, let alone meeting any of them. In Bosnia and Herzegovina, this gap has been filled by civil society organisations which are funded by international donors. The initiatives that civil society organisations undertake are autonomous in character and critical of the patriarchal, militarist state structures. Now the chapter turns to analyse one of these gender transformative civil society initiatives: Women's Court for the Former Yugoslavia.

#### **4.1. Women's Court for the Former Yugoslavia: An Attempt at Gender Transformative Justice**

The idea of a 'women's court' emerged as a response to the gender-blind transitional justice mechanisms. Women have always been aware of the fact that transitional justice mechanisms, from criminal trials to reparation mechanisms, have ignored the suffering of women and that the structural violence-aggravated consequences of violence against women has never been a concern in these mechanisms. In response to this, in different parts of the world, from Pakistan to Cairo, from Tokyo to Beirut, in more than 40 countries, women created women's courts.<sup>82</sup> In these courts, which include neither judges nor perpetrators, a number of human rights issues have been brought forward: "war crimes against women, violence and crimes against women committed in the name of customs and religion, military violence against women *and* whole populations, economic violence and violations in workplace rights, domestic violence against women, abuse of women's reproductive rights, crimes against native people, specifically political violence".<sup>83</sup>

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<sup>81</sup> Robert Cryer *et al.*, *An Introduction to International Criminal Law and Procedure* (CUP 2007) 400.

<sup>82</sup> Gordana Daša Duhaček, 'The Women's Court: A Feminist Approach to In/Justice' (2015) 22 *European Journal of Women's Studies* 159, 160.

<sup>83</sup> *ibid* (emphasis in original).

The aim of the Women's Court for the former Yugoslavia (the Women's Court or the Court) was to create a safe space for women to come forward and tell their stories not only of suffering but also of courage and resistance.<sup>84</sup> Although these courts have no legal powers, they provide a collective moral condemnation of gender-based crimes in the societies at stake.<sup>85</sup> The Women's Court was held in Sarajevo from 7 to 10 May 2015. During this four-day period, the Court was divided in five core themes: war against the civilian population (militaristic/ethnic/gender-based violence); women's bodies – a battlefield (sexual violence in war zones); militaristic violence and women's resistance; persecution of those who are different – in war and peace (ethnic violence); and an undeclared war (social and economic violence, women's resistance). After each thematic session which included women's testimonies, two or three women – academics and/or human rights activists – “link[ed] a *subjective text* (a woman's testimony) with the *objective analysis* of political, social-economic and cultural context of the violence that took place”.<sup>86</sup>

Among the Bosnian transitional justice mechanisms, The Women's Court has been the only mechanism which acted on a gender transformative justice approach according to the theoretical framework of this thesis. As discussed in the theoretical chapter,<sup>87</sup> a gender transformative justice approach requires connecting individual violence with structural violence and then to find the economic, social, political and cultural reasons why these violations occurred in the first place. The Women's Court pursued the goal of illustrating these connections. Interconnectedness and indivisibility of human rights have been underlined by bringing forward different and simultaneous human rights violations of women.

Another principle of gender transformative justice can also be identified in the Women's Court approach: The Women's Court successfully demonstrated the linkages between pre-, during and post-conflict violence against women. It sought to name “the social, political, economic forces which have offered structural support to, and thus led to, injustice”.<sup>88</sup> This, as Janine Natalya Clark pointed out, enabled the Court to see the continuity of violence

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<sup>84</sup> Janine Natalya Clark, ‘Transitional Justice as Recognition: An Analysis of the Women's Court in Sarajevo’ (2016) 10 *International Journal of Transitional Justice* 67, 68.

<sup>85</sup> *ibid* 77.

<sup>86</sup> For the methodology of the Court, see ‘Women's Court: A Feminist Approach to Justice’ <<http://www.zenskisud.org/en/Metodologija.html>> accessed 3 October 2018 (emphasis in original).

<sup>87</sup> See Chapters 2 and 3.

<sup>88</sup> Duhaček (n 82) 161.

against women in the society<sup>89</sup> which is a principle of gender transformative justice within the scope of this thesis. By linking the pre-conflict violence against women with wartime violence against women, the Women's Court contextualised and historicised the wartime violence in the former Yugoslavia. With this interpretation and understanding of violence against women, the Court illustrated the links and continuums between wartime and 'peacetime' violence.

Women's courts raise the awareness of a wide community about the human rights violations which have occurred.<sup>90</sup> At the end, they issue public statements which, among other things, include preliminary recommendations. These recommendations have included, for instance, calls for: an end to militarism, a full disarmament and a reduction in military spending; social and economic justice; transformative reparations and redress; and an end to patriarchal, heteronormative and militaristic attitudes.<sup>91</sup> This corresponds exactly with what I have defined as the goals of gender transformative justice. In terms of solutions, the Women's Court went far beyond the solutions provided by the UN Security Council or the National Action Plans of Bosnia and Herzegovina.<sup>92</sup> Here, women successfully analysed the post-conflict situation and offered recommendations which were transformative for both women and the whole society.

The Women's Court for the former Yugoslavia would have been 'more gender transformative' if it had taken into consideration the intersectionality element.<sup>93</sup> Unfortunately, the Court did not feature the testimonies of women from, for instance, urban centres.<sup>94</sup> Or, although it mobilized with the motivation of bringing forward the different roles which women took during the conflict, women who volunteered to serve in the national armies were not there.<sup>95</sup> The Women's Court missed the opportunity to explore the

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<sup>89</sup> Clark (n 84) 81.

<sup>90</sup> Duhaček (n 82) 162.

<sup>91</sup> Women's Court: Feminist Justice-Judicial Council, Preliminary Decisions and Recommendations – Authorised Oral Preliminary Decision (Delivered in Sarajevo, 9 May 2015) <<https://research.gold.ac.uk/17965/1/Women%27s%20Court%20Preliminary%20Decision%20Judicial%20Council%2009%2005%202015.pdf>> accessed 3 October 2018.

<sup>92</sup> See Chapter 4.

<sup>93</sup> For a discussion regarding intersectionality in transitional justice context, see Chapter 2. For a critical evaluation of the Women's Court, see also Daniela Lai and Caterina Bonora, 'The transformative Potential of Post-War Justice Initiatives in Bosnia and Herzegovina' in Matthew Evans (ed.), *Transitional and Transformative Justice: Critical and International Perspectives* (Routledge 2019) pp 54-76.

<sup>94</sup> Maria O'Reilly, 'Peace and Justice through a Feminist Lens: Gender Justice and the Women's Court for the former Yugoslavia' (2016) 10 *Journal of Intervention and Peacebuilding* 419, 431.

<sup>95</sup> *ibid.*

representation of the different roles which had been taken by women both as victims and as agents (ex-combatants, for instance). Moreover, there were many criticisms regarding the composition of the testifiers. The Court has been criticised for giving “the impression that certain ethnic groups suffered from wartime violence far more than others”.<sup>96</sup>

Despite these criticisms, it is clear that the Court enabled women to tell their stories more than any transitional justice mechanism had allowed them to do. It brought together Bosnian, Croatian and Serbian women and created solidarity across the ethnicities. The concept of peace was defined as not just the absence of armed conflict, but much more by the Women’s Court.<sup>97</sup> Beyond that, the violence that women were exposed to was clarified by linking pre-conflict violence with the post-conflict continuums which it created. That is why the recommendations which the Court made went far beyond those brought by ICTY, the UN Security Council or domestic legal mechanisms. The individual stories were located within structural ones and women became able to re-interpret their stories and connect them with broader inequalities and injustices, and to seek transformative justice for the violations of their human rights.

#### **4.2. The Domestic Law of Bosnia and Herzegovina on ‘Reparations’: Obstacles to Gender Transformative Justice**

As a result of language barriers, I was not able to use the primary domestic legislation. Although there are English translations of the Bosnian legislation in varied online platforms, these platforms are unofficial. Since unofficial online platforms fail to provide full credibility, secondary sources were used in order to analyse the text of the domestic legislation and to show how the wording used reinforces gender stereotypes.

Strictly speaking, in Bosnia and Herzegovina, there is no specific mechanism that can be named a ‘reparation mechanism’. Many victims have applied to the laws which regulate specific social benefits for which they, as victims of the conflict, may be eligible.<sup>98</sup> One of these domestic laws of Bosnia and Herzegovina is the 1999 Law on Principles of Social Protection, Protection of Civil Victims of War, and Protection of Families with Children.

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<sup>96</sup> Clark (n 84) 81.

<sup>97</sup> Duhaček (n 82) 172.

<sup>98</sup> Kate Clark, ‘War Reparations and Litigation: The Case of Bosnia’ (Nuhanovic Foundation: Centre for War Reparations, International Litigation Series 1, 2014) <<http://www.nuhanovicfoundation.org/user/file/bosniareport-digi.pdf>> accessed 3 October 2018, 26.

Under this law, a person who suffers at least a 60% disability due to injuries or wounds sustained in, among others, war events would be a ‘civil victim of war’ and would become eligible for social benefits under this law.<sup>99</sup> Following the 2006 amendments and supplements, article 54(3) provided that,

“persons who were victims of sexual assault and rape constitute a special group of civil victims and are entitled to a monthly personal cash benefit amounting to 70 percent of the base that is applied to disabled war veterans’ entitlements”.<sup>100</sup>

Unlike many other post-conflict countries, in terms of providing victims of sexual violence with social benefits, Bosnia and Herzegovina has been considered as a success story from a gender perspective. This law has enabled victims of sexual violence to be categorised within civil victims of war, regardless of any percentage of disability acquired as a consequence of sexual violence. Sexual violence victims have had the opportunity to have direct access to the cash benefits without having to provide any evidence of disability, unlike the other civilian victims of war. Although from this perspective Bosnia and Herzegovina can be considered to have applied a gender-friendly social services mechanism, there are many problems which prevent gender transformative reparations mechanism from being carried out in Bosnian society. I now consider the obstacles to gender transformative reparations in the case of Bosnia and Herzegovina by applying the theory of gender transformative reparations set out above.

In putting forward the theory of transformative justice and transformative reparations, it has been emphasised throughout this thesis that the root causes of violence against women and structural violence need to be addressed within the transitional justice mechanisms in order to transform the roles of women in the society. One major drawback to this in the context of Bosnia and Herzegovina is that reparations have been carried out in a way which reproduces the structural violence. Reparations have also been designed so as to keep military masculinities alive. As a result, reparations reinforce ethnicity-based divisions. The section now examines the ways in which military masculinities have been reproduced by domestic laws in Bosnia and Herzegovina.

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<sup>99</sup> Law of 1999 on Principles of Social Protection, Protection of Victims of War and Protection of Families with Children [Bosnia and Herzegovina], 6 September 1999 <<http://www.refworld.org/docid/4d30226f2.html>> accessed 3 October 2018, article 54.

<sup>100</sup> Clark (n 98) 27-28.



First, the victims have been strictly categorised according to whether they are civilians or veterans in Bosnia and Herzegovina: the social benefits have fundamentally changed between these categories. Although a 20% disability level has been sufficient for war veterans to receive benefits,<sup>101</sup> for civilians this level has been 60%.<sup>102</sup> Second, civilian victims are entitled to significantly lower allowances (70% of veterans' allowances).<sup>103</sup> Third, according to the findings of Amnesty International (AI), "the amount of money awarded to widows of civilian casualties is significantly lower than that received by families of dead or missing soldiers".<sup>104</sup> Although the domestic laws are problematic in terms of reinforcing the divisions between civilians and veterans, the implementation of these laws is more worrisome. The majority of civilian victims of serious human rights violations have never been able to receive any reparations for their suffering whereas war veterans and their families have by and large benefited from social benefits and reparations.<sup>105</sup> These payments to former soldiers and their families have for years swallowed up a large proportion of the entities' budgets.<sup>106</sup> In the Federation of Bosnia and Herzegovina, total spending on war veterans equates to approximately two-thirds of all non-contributory benefits.<sup>107</sup> Dissatisfied war veterans continue forcing the state to introduce new rights and increase existing payments.<sup>108</sup>

The existing laws fail to consider the human rights violations of civilians. The transitional justice process in Bosnia and Herzegovina has "marginalized civilian victims of war while

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<sup>101</sup> Jessie Hronesova, 'Might Makes Right: War-Related Payments in Bosnia and Herzegovina' (2016) 10 *Journal of Intervention and Statebuilding* 339, 347.

<sup>102</sup> This has created many problems for 'prisoners in camps' since many of them have not been able to prove the condition of 60 percent disability. See Women Organising for Change, 'Concept and Framework for the Development of a Gender-Sensitive Reparations Program for Civilian Victims of War in Bosnia and Herzegovina' (February 2016) <<https://wilpf.org/wp-content/uploads/2018/04/Gender-Sensitive-Reparations-Program.pdf>> accessed 3 October 2018, 12.

<sup>103</sup> O'Reilly (n 94) 432.

<sup>104</sup> Amnesty International, 'Bosnia-Herzegovina: Honouring the Ghosts: Confronting Impunity for "disappearances"' (March 2003) <<https://www.amnesty.org/download/Documents/108000/eur630102003en.pdf>> accessed 3 October 2018, 56.

<sup>105</sup> *ibid* 45.

<sup>106</sup> Linda Popić and Belma Panjeta, 'Compensation, Transitional Justice and Conditional International Credit in Bosnia and Herzegovina: Attempts to Reform Government Payments to Victims and Veterans of the 1992-1995 War' (June 2010) <[http://www.justice-report.com/en/file/show/Documents/Publications/Linda\\_Popic\\_ENG.pdf](http://www.justice-report.com/en/file/show/Documents/Publications/Linda_Popic_ENG.pdf)> accessed 3 October 2018, 4.

<sup>107</sup> Fitim Salihu, 'After the War Ends: Solving War Veterans' Issues Across the Balkans' *Kosovo 2.0* (24 December 2018) <<https://kosovotwopointzero.com/en/after-the-war-ends/>> accessed 25 December 2018.

<sup>108</sup> Nikolina Obradović, 'Could Non-Contributory Social Transfers in Bosnia and Herzegovina Reach Those Most in Need?' European Commission, European Social Policy Network Flash Report 2018/74 <<https://www.mreza-mira.net/wp-content/uploads/2018/12/ESPN-Flash-Report-2018-74-BA-December-2018.pdf>> accessed 25 December 2018.

privileging the military” and “is also based on ethnically and politically sponsored rights and privileges”.<sup>109</sup> Another implication of this process is that since war veterans are mostly males, the payment system directly privileges males and institutionalises androcentric value patterns.<sup>110</sup> Moreover, war veterans have been considered and referred to as ‘voting machines’ of the ethno-national parties.<sup>111</sup> These payments are mechanisms and means to maintain ethnic divisions and to guarantee votes for the nationalist parties which are still the ruling parties in Bosnia and Herzegovina.

Because of these drawbacks, many have criticised these mechanisms for being social welfare payments rather than providing the rule of law in the society.<sup>112</sup> For instance, under the 2004 Law on Missing Persons, financial support is terminated when a child completes his/her education or gets married,<sup>113</sup> or a spouse enters into a marriage.<sup>114</sup> Advocates and victims have long claimed that these laws cannot be considered as reparations for war victims since reparations are paid “regardless of the circumstances of the beneficiary”.<sup>115</sup> Moreover, in the case of a medical commission revising a victim’s state or if the law changes (which is not uncommon), beneficiaries might lose all the allowances.<sup>116</sup> Similarly, it is possible to lose all social benefits when a sufficient level of income is achieved by the beneficiary.<sup>117</sup> This leaves the beneficiaries in an ambiguous situation and does not process their cases as reparations which are regulated under international human rights treaties.<sup>118</sup> In sum,

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<sup>109</sup> Hronesova (n 101) 340.

<sup>110</sup> Nancy Fraser, ‘Feminist Politics in the Age of Recognition: A Two-Dimensional Approach to Gender Justice’ (2007) 1 *Studies in Social Justice* 23 cited in O’Reilly (n 94) 432.

<sup>111</sup> Hronesova (n 101) 350.

<sup>112</sup> According to Popić and Panjeta (n 106) 4: “This variety in terminology reflects the divergent conceptions of what these payments are and what their function is, which in turn, influences conceptions of how the payments should be regulated, who should receive them, and how any changes should be made.”

<sup>113</sup> Law of 2004 on Missing Persons [Bosnia and Herzegovina] 21 October 2004 <<https://www.icmp.int/wp-content/uploads/2014/08/law-on-missing-persons.pdf>> accessed 3 October 2018, article 14(a).

<sup>114</sup> *ibid* article 14(b).

<sup>115</sup> Clark (n 98) 31.

<sup>116</sup> Hronesova (n 101) 346.

<sup>117</sup> Maja Šoštarić, ‘War Victims and Gender-Sensitive Truth, Justice, Reparations and Non-Recurrence in Bosnia and Herzegovina’ Impunity Watch Perspective Series: Research Report (2012) <[https://www.impunitywatch.org/docs/Gender\\_Research\\_Report\\_BiH\\_English.pdf](https://www.impunitywatch.org/docs/Gender_Research_Report_BiH_English.pdf)> accessed 3 October 2018, 50.

<sup>118</sup> Chile presents a good example on this case. Here, victims continue receiving reparations no matter how their circumstances change and payments cannot be taken away by the state in any case. See Elizabeth Lira, ‘The Reparations Policy for Human Rights Violations in Chile’ in Pablo de Greiff (ed.), *The Handbook of Reparations* (OUP 2006) pp 55-101, 59.

“payments are not compensatory in the sense espoused by international law, because eligibility is not based on a right being violated.”<sup>119</sup>

These findings suggest that the purpose of these payments is only to alleviate post-conflict poverty.

Here, it is necessary to emphasise the problems which occurred as a result of different law practices within the entities of Bosnia and Herzegovina.<sup>120</sup> The state structure which allowed the Republika Srpska to adopt different laws, including laws on social benefits for victims of war, caused different implications which were even more discriminatory and much less gender transformative than those implemented in the Federation of Bosnia and Herzegovina. The major difference is that in Republika Srpska victims of sexual violence are not categorised as a different group, so they are also expected to undergo the standard procedure of proving 60% disability.<sup>121</sup> In addition, the law here established a deadline for applications for social benefits (which was 31 December 2007).<sup>122</sup> This deadline created difficulties for sexual violence victims of war since “it might take years before the victims are ready to speak out, or access the measures, depending on their psychological and physical state of being”.<sup>123</sup> There were also significant differences in the payment amounts between the two entities.<sup>124</sup>

In conclusion, ethno-nationalism-based, militarist, and canton and entity-level differences in laws have been the main obstacles to gender transformative reparations in Bosnian society. Rather than providing a gender-just process, the domestic laws here have been mechanisms and means for reinforcing structural violence and have not suggested any solutions for the root causes of the wartime violence against women. From the perspective of gender transformative justice theory,<sup>125</sup> domestic laws remain far from providing any transformative roles for women. I now discuss the symbolic reparation mechanisms in Bosnia and

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<sup>119</sup> Popić and Panjeta (n 106) 17.

<sup>120</sup> For understanding how these entity and canton-level laws affect Bosnian people’s right to health, see Initiative and Civil Action, ‘Why are We not Equal in Rights to Health Protection? Analysis and Recommendations’ (November 2010) <[http://rightsforall.ba/publikacije-en/docs-en/Report\\_health\\_protection.doc](http://rightsforall.ba/publikacije-en/docs-en/Report_health_protection.doc)> accessed 3 October 2018.

<sup>121</sup> Guide for Civilian Victims of War: How to Enjoy the Right to Protection as a Civilian Victim of War in the Republika Srpska (International Commission on Missing Persons Report, 2007) <<https://www.icmp.int/wp-content/uploads/2014/08/guidebook-victim-of-war-rs.pdf>> accessed 3 October 2018, 5.

<sup>122</sup> *ibid* 15-16.

<sup>123</sup> Women Organising for Change (n 102) 30.

<sup>124</sup> “As of June 2009, the maximum monthly individual payment for a civilian victim (without allowances) was 514 KM in the Federation, and 375 KM in RS. The maximum monthly payment for a disabled war veteran (without allowances) was 734 KM in the Federation, and 650 KM in RS.” Popić and Panjeta (n 106) 6.

<sup>125</sup> See Chapters 2 and 3.

Herzegovina in order to examine the extent to which they can be considered to provide gender transformative justice.

### 4.3. Exploring the Gender Transformative Role of Symbolic Reparations in Bosnia and Herzegovina

In the peace-building literature, the initiatives of civil society have been considered as having the potential to transform the relationships and the institutions in the society.<sup>126</sup> In many post-conflict countries, symbolic reparations, for instance memorials, “have become a significant part of the transformation and transitional justice process”.<sup>127</sup> In this section, I look at the symbolic reparations in Bosnia and Herzegovina and explore the impact of these reparations on women. The questions asked here are: Could memory initiatives in Bosnia and Herzegovina contribute to gender transformative justice by providing any kind of symbolic reparation? Do these initiatives help women to change their roles and create new images or do they simply reproduce the gendered hierarchies in the society?

In the context of Bosnia and Herzegovina, there are no truth and reconciliation commissions. One implication of this is that symbolic reparations carry another mission for this country: revealing the truth. Since there is no consensus on what happened during the war, these symbolic reparations are burdened with the need to expose the truth. This has resulted in a complicated situation: memorialisation initiatives suffer the same divisions in the wider population.<sup>128</sup> In Bosnia and Herzegovina, every town,

(... ) is marked and owned by the majority population, visible through the building of Catholic or Orthodox churches and/or mosques, but even through the erection of memorials exclusively for the remembrance of the victims

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<sup>126</sup> See John Paul Lederach, *Building Peace: Sustainable Reconciliation in Divided Societies* (Institute of Peace Press 1997); Louise Diamond and John McDonald, *Multi-Track Diplomacy: A Systems Approach to Peace* (Kumarian Press 1996); Ronald Fisher, ‘The Potential for Peacebuilding: Forging a Bridge from Peacekeeping to Peacebuilding’ (1993) 18 *Peace and Change* 247.

<sup>127</sup> Ereshnee Naidu, ‘Symbolic Reparations: A Fractured Opportunity’ (Centre for the Study of Violence and Reconciliation 2004) <<http://www.csvr.org.za/docs/livingmemory/symbolicreparations.pdf>> accessed 3 October 2018, 4. For symbolic reparations see also Brown (n 37).

<sup>128</sup> Jasmina Tepić, ‘Do Memory Initiatives Have a Role in Addressing Cultures of Silence that Perpetuate Impunity in Bosnia and Herzegovina?’ Impunity Watch Perspective Series: Research Report (2012) <[https://www.impunitywatch.org/docs/BiH\\_Mem\\_Research\\_Report\\_English.pdf](https://www.impunitywatch.org/docs/BiH_Mem_Research_Report_English.pdf)> accessed 3 October 2018, 19.

(civilian or military) of the ethnic group to which the majority of the residents of that town belong.<sup>129</sup>

This prevents not only revealing the truth but also facing a past which includes the violence perpetrated against women from all three ethnicities during the war. In Bosnia and Herzegovina, there is no memorialisation of the suffering that women endured.

So how do symbolic reparations play out in Bosnian society? What happens to the minorities in the towns when a memorial is constructed which excludes ‘their truth’ and does not offer any symbolic reparation for them? Such cases were raised by Janine Natalya Clark in the context of the case of Vukovar in Croatia. Clark observed that acknowledgement of Serb suffering was lacking in the memorials of Vukovar.<sup>130</sup> This means that memorials have not been mechanisms for apologising to all victims across the ethnic lines but, on the contrary, they have polarised the society more and created the problematic situation of “selective remembrance and the exclusion of certain groups of victims”.<sup>131</sup> Although these initiatives have not been transformative for either society or women, there are exceptions as well. I now look at transformative symbolic reparations initiatives which have been organised and practised by women in the former Yugoslavia region.

On 15 July each year, the organisation Women in Black (WiB) Belgrade marks the anniversary of the Srebrenica genocide along with other NGOs, and this displays clear attitudes towards the responsibility for war crimes of the Serbian regime that was in power until 2000. In 2010, a group within this organisation led a street campaign called ‘One Pair of Shoes, One Life’. WiB invited the citizens of Serbia to participate in the campaign “by donating a pair of shoes together with a written message for the survivors of Srebrenica to mark the 15<sup>th</sup> anniversary of the genocide”.<sup>132</sup> The long-term purpose of this campaign is to build a monument in memory of what happened at Srebrenica.<sup>133</sup>

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<sup>129</sup> *ibid.*

<sup>130</sup> Janine Natalya Clark, ‘Reconciliation through Remembrance? War Memorials and the Victims of Vukovar’ (2013) 7 *International Journal of Transitional Justice* 116, 126.

<sup>131</sup> *ibid* 118.

<sup>132</sup> Olivera Simić and Kathleen Daly, ‘One Pair of Shoes, One Life’: Steps towards Accountability for Genocide in Srebrenica’ (2011) 5 *International Journal of Transitional Justice* 477, 485. See also Laura McLeod *et al.*, ‘Artistic Activism, Public Debate and Temporal Complexities: Fighting for Transitional Justice in Serbia’ in Peter D. Rush and Olivera Simić (eds), *The Arts of Transitional Justice: Culture, Activism, and Memory after Atrocity* (Springer 2014) pp 25-42, 36.

<sup>133</sup> *ibid* 478.

Although such a monument does not seem possible at the moment, the initiative is transformative for several reasons. First, it is designed and implemented by women: they have been the main decision-makers throughout the whole process. Second, the campaign crosses ethnic boundaries and challenges the “selective memory”.<sup>134</sup> Third and more importantly, from the perspective of gender transformative justice, like other campaigns carried out by WiB, this campaign, unlike UN WPS agenda,<sup>135</sup> is a protest against militarism, ethnic hatred and the exclusion of specific groups of victims. Such protests addressing structural violence and the root causes of the conflict by way of symbolic reparations help women to transform their roles in the society.

## 5. Conclusion

For gender transformative justice, transitional justice mechanisms are required to address gendered hierarchies and structural inequalities in post-conflict societies. With this principle, in this chapter I analysed the extent to which international law allows and obliges states to provide gender transformative reparations. Having examined the development of reparations mechanisms through international declarations, it has been found that an expectation for a transformation from reparations mechanisms is clearly established in these declarations. Moreover, with the adoption of the Nairobi Declaration, it has been confirmed that women’s and girls’ extra vulnerabilities to wartime violence is the result of pre-existing structural inequalities and gendered hierarchies. Such an approach in the international declarations require states to create reparations mechanisms which challenge these inequalities.

When the practice is examined through the case of Bosnia and Herzegovina, it reveals that a gap exists between international and domestic legal frameworks. Although Bosnia and Herzegovina takes important steps benefitting sexual violence survivors, these benefits are not provided through a national reparation mechanism; thus, the practice remains sporadic. In addition, domestic laws which enable war victims and witnesses to enjoy benefits fall short of challenging the patriarchal society structures, militarism, and ethnic divisions. As a result of that, domestic laws in Bosnia and Herzegovina, in this chapter, are considered to reinforce and reproduce the gendered hierarchies and structural inequalities in the post-conflict reconstruction period.

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<sup>134</sup> Clark (n 130) 122.

<sup>135</sup> See Chapter 4.

This section of the thesis has discussed the extent to which international legal frameworks provide gender transformative justice for post-conflict countries. Having analysed the legal frameworks, now the thesis turns to scrutinise the domestic implementation of these legal frameworks. In addition to bringing forward the gaps between the law and practice, the next section teases out the underlying reasons for the lack of implementation.

## CHAPTER 6: DATA GATHERING METHODS FOR THE RESEARCH

“Realizing how much of what we write is not really objective but interpretive leads us to a better understanding of how we do fieldwork.”<sup>1</sup>

### 1. Introduction

The two previous chapters examined the extent to which international legal frameworks provide gender transformative justice for post-conflict societies. Following from this chapter, the rest of the thesis focuses on the implementation of the legal frameworks in the case of Bosnia and Herzegovina in order to find out whether the transition period is gender transformative. Before an evaluation of the fieldwork findings (in Chapters 7 and 8), in this chapter I give insight into the data gathering processes which provided the qualitative data for the study.

This chapter elaborates the methods that I used during my fieldwork in Bosnia and Herzegovina. In section 2, I carry out an analysis of the interview procedures. I illustrate the methods and strategies that I used in order to create a safe space both for myself as a researcher and also for my interviewees. In section 3, I present a reflection back on my fieldwork and aim to identify my ‘positionality’ in Bosnia and Herzegovina. To provide this, I engage with the relevant literature regarding ‘social research on conflict and post-conflict countries’. This helped me to differentiate my interchangeable insider/outsider status in Bosnia and Herzegovina. In the final section, I present the interaction between the theoretical framework of this thesis and the fieldwork. Here, the reasons for conducting a fieldwork are elaborated. I reflect on how the interview data and the main lines of the theory of this thesis feed into each other. Overall, in addition to illustrating the methods employed in my research, this chapter provides a space for my personal reflections upon my fieldwork experience.

### 2. Reflective Analysis of the Interview Process During the Fieldwork

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<sup>1</sup> Simon Ottenberg, “Thirty Years of Fieldnotes: Changing Relationships to the Text” in Roger Sanjek (ed.), *Fieldnotes: The Making of Anthropology* (Cornell University Press 1990) pp 139-160, 157.



From the middle of May until the end of July in 2017, I undertook my fieldwork in Bosnia and Herzegovina and carried out 26 interviews in total. As a consequence of my internship in an NGO which is located in Zenica, I was based in the city of Zenica during my fieldwork period. Zenica is one of the largest cities in the Federation of Bosnia and Herzegovina which is also the capital of Zenica-Doboj Canton. It is only an hour away from Sarajevo (the capital); this enabled me to travel easily to the capital city where both non-governmental organisations (NGOs) and governmental and regional institutions are mostly located.

My principal research method was to conduct semi-structured interviews with women's rights-related non-governmental, governmental and regional institutions; but also, I aimed to talk to (and listen to) (direct) victims of violence during the fieldwork period. However, differentiating my interviewees as Victim or NGO was not possible. A person might fit in both of these categories simultaneously. For this reason, I avoided re-creating a victim-agent dichotomy in my thesis. For this reason, I used the general term 'Interviewee' to cite my interviewees.

My research was identified as a 'high-risk' project and ethical concerns were discussed with me by the University enabling me to take into account a range of ethical matters while in Bosnia and Herzegovina. I now turn to address these ethical concerns that have been an integral component of conducting the fieldwork. For fieldwork to be ethical, interviewees "must consent to their participation in full understanding of the potential risks and benefits".<sup>2</sup> Informed consent "helps in acknowledging the *autonomy of the interviewees* and underscores respect for confidentiality and privacy".<sup>3</sup> In addition to respect for confidentiality and privacy, I consider informed consent as an indivisible part of the *autonomy* of the interviewees. During interviews, I was told by several interviewees not to write down some of the information that they provided. This data has never been transformed into written form. For other interviewees, I provided them with an account of their interview in writing and enabled them to make revisions of the text where necessary. I consider this conduct as an important requirement especially when the interviews are conducted with a translator. Only four interviewees came back with change requests. These requests were not about the content; they asked for revisions in order to correct their grammar mistakes and

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<sup>2</sup> Elisabeth Jean Wood, 'The Ethical Challenges of Field Research in Conflict Zones' (2006) 29 *Qualitative Sociology* 373, 379.

<sup>3</sup> Meha Dixit, 'Field Research in Conflict Zones: Experience from India and Sierra Leone' (2012) 49 *International Studies* 133, 141 (emphasis added).

to clarify their points. Returning the written forms to the interviewees was a helpful process for me too. When I returned the interview transcripts, I had a chance to ask the interviewees to clarify the ambiguous parts or double-check the spellings of some Bosnian words.

Potential interviewees were contacted via email or telephone. After I received a positive answer, I sent the information sheet and consent form to the interviewees. The ones contacted via telephone were asked to give their email addresses for me to send the forms. This process enabled the interviewees to read the papers long before the interview date and to think through the procedures. At the beginning of each interview, I asked each interviewee whether s/he did read the forms. The consent issue was explained again at the beginning of the interviews. As the information sheet pointed out, the consent could be withdrawn any time before the thesis was submitted (the expected date at the time was September 2018). These explanations seemed to increase the interviewees' confidence and engagement.

Another deliberate decision was to put several categories in the consent form with boxes. The interviewees had the chance (not) to receive questions in accordance with their preferences. Although none of the interviewees said 'no' to any given sections, I consider these as options which not only increase the confidence of the interviewee in the researcher but also increase the autonomy of the interviewees in both during and after the interviews. I concur with Erin K. Baines who suggested a way to prevent "the potential paralysis of representation is to open a process of dialog between the researcher and the researched".<sup>4</sup> The relationship between informed consent and the autonomy of the interviewees was respected during my fieldwork. However, "(t)here remains the problem of who owns the story being told"<sup>5</sup> and the problem of whether the researcher needs to gain the consent of the people that interviewees talk about during the interviews. Here, I adopt the approach Aisling Swaine took in her PhD thesis:<sup>6</sup> the imperative has been to ensure that these women's identities stay strictly confidential; the writing is processed in a way so as not to expose these identities.

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<sup>4</sup> Erin K. Baines, 'Gender Research in Violently Divided Societies: Methods and Ethics of 'International' Researchers in Rwanda' in Elisabeth Porter *et al.* (eds), *Researching Conflict in Africa: Insights and Experiences* (United Nations University Press 2005) pp 140-155, 144.

<sup>5</sup> Aisling Swaine, 'Transition or Transformation: An Analysis of Before, During and Post-Conflict Violence Against Women in Northern Ireland, Liberia and Timor Leste' (PhD thesis, University of Ulster 2011) 60.

<sup>6</sup> *ibid.*

Quotations from the interviews are frequently used in the fieldwork analysis chapters. These quotations are believed to “evoke everyday experiences of violence in its myriad manifestations”.<sup>7</sup> Direct quotations are integral to the purpose of the thesis as well since gender transformative justice and conflict transformation theories attach importance to the meaning of ‘peace’ for the people ‘on the ground’. This brings the question of how many interviews are sufficient for a PhD thesis. When do the quotations that are used become sufficient to ‘prove’ or ‘support’ the argument?

In the literature, ‘data saturation’ has been recommended as a measurement for deciding on how many interviews are enough.<sup>8</sup> Data saturation is a point where “the new information produces little or no change to the codebook”.<sup>9</sup> This point is strictly related to ‘participant homogeneity’: “(t)he more similar participants in a sample are in their experiences with respect to the research domain, the sooner we would expect to reach saturation”.<sup>10</sup> Conducting interviews with referrals can result in such a consequence. That is why a researcher should constantly ask “Who can I talk to in order to get an opposite view on this?”<sup>11</sup> Although ‘data saturation’ does not provide so much help in the early stages of the field research, it can be meaningful and useful post facto when the researcher identifies the fact that “several other themes dwindled in importance as transcripts were added and the analysis progressed”.<sup>12</sup> This was my approach in terms of deciding the end of the interview process. Although I believe that every person’s story is worth listening to and would deepen and enrich my understanding on the transitional justice process in the field, by the end of my fieldwork period I started to feel that I have gathered enough data to support the necessity of a gender transformative justice approach and practice. Sufficient data supporting the principles of gender transformative justice model developed in this thesis was acquired.

In addition to the interviews, my field notes are also used. Field notes are “researchers’ private, personal, thoughts, ideas and queries regarding research observations and

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<sup>7</sup> Carolyn Nordstrom and Antonius C. G. M. Robben, ‘Introduction’ in Carolyn Nordstrom and Antonius C. G. M. Robben (eds), *Fieldwork Under Fire: Contemporary Studies of Violence and Survival* (University of California Press 1995) pp 1-23, 2.

<sup>8</sup> Greg Guest, Arwen Bunce and Laura Johnson, ‘How Many Interviews are Enough? An Experiment with Data Saturation and Variability’ (2006) 18 *Field Methods* 59, 59.

<sup>9</sup> *ibid* 65.

<sup>10</sup> *ibid* 76.

<sup>11</sup> I talk about my experience regarding this issue below.

<sup>12</sup> Guest, Bunce and Johnson (n 8) 78.

interviews”.<sup>13</sup> While doing my fieldwork, there was a flow of information on a daily basis in the NGO. From the first day, I kept regular daily notes that have been very useful for me to contextualise the information I gathered. The notes I took during the conferences, workshops, and outgoing events that the NGO I was intern for organised helped me to gain deeper insights into the transitional justice process in Bosnia and Herzegovina. As it has been underlined in the literature, field notes enable the researcher to “situate qualitative studies within a larger societal and temporal context”.<sup>14</sup>

During the data gathering process, I experienced some dilemmas that the relevant literature echoes: how should the attitude of the researcher be towards the interviewees? Should the researcher be ‘friendly’? What are the possible implications of being ‘friendly’? What are the lines between being ‘too friendly’ and ‘friendly’? Can writing a feminist thesis and taking a feminist-legal approach create a ‘sisterhood’ during the interviews? Does writing about women create a ‘friendly’ interview process naturally? Should it create it at all? How does this friendliness end for the interviewees? Is the purpose being friendly or collecting more data? Can these purposes be separated from each other? When I was conducting interviews, I was not pondering these questions. The goal was to conduct interviews and to collect most of the data ‘in a friendly manner’. Having completed the fieldwork and reflecting back on it, especially considering how much data I gathered, I started to think about the reasons for gaining that amount of data.

The feminist literature seems to have the same dilemmas: Ann Oakley is on one side of this discussion.<sup>15</sup> Oakley, very rightly, points out that many scholars do not “bother to describe in detail the process of interviewing itself”.<sup>16</sup> Having identified this gap, she comprehensively elaborates the details regarding the way how she conducted her interviews. Oakley describes how her friendliness ended up with offers of tea, coffee, and meals by the interviewees.<sup>17</sup> She explains this attitude of the interviewees as a consequence of a non-hierarchical relationship that as a researcher she created by investing in her personal identity and by sharing her own

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<sup>13</sup> Julio Philippi and Jane Lauderdale, ‘A Guide to Field Notes for Qualitative Research: Context and Conversation’ (2017) 27 *Qualitative Health Research* 381, 381.

<sup>14</sup> *ibid.*

<sup>15</sup> cf. John Hockey, ‘Research Methods - Researching Peers and Familiar Settings’ (1993) 8 *Research Papers in Education* 199, 215.

<sup>16</sup> Ann Oakley, ‘Interviewing Women: A Contradiction in Terms’ in Helen Roberts (ed.), *Doing Feminist Research* (Routledge 1981) pp 30-61, 31.

<sup>17</sup> *ibid* 45.

experiences regarding pregnancy and motherhood periods which is what her research is about.<sup>18</sup>

The main weakness of her argument is that Oakley ignores the significance of the context of her research; Oakley's argument cannot easily be generalised to other research fields. Although sharing motherhood experience can be (although not definitely) a 'bonding' factor between interviewees and researchers, sharing experiences and sharing personal opinions does not always result in positive consequences for researchers. As Ioannis Armakolas experienced during his fieldwork<sup>19</sup>, revealing one's own opinions and own experiences may contrast with 'assumed ideas' about the researcher and can result in the researcher being 'unwelcome' in the field.

Oakley's second argument is also problematic and received many criticisms: Oakley claims that 'sisterhood' is an important concept in terms of enabling women to "re-evaluate the basis of their relationships with one another".<sup>20</sup> Her argument is a part of a larger discussion between feminist scholars: Does being a woman interviewing women require rapport? Is it not possible to gain information without creating a good rapport? If not possible, is it a requirement or a strategy in order to gain more information from the interviewees rather than a natural bonding? Miranda H. Alison challenges Oakley's argument with the practice that she implemented during her fieldwork. Alison underlines that she did not "feel that being a woman interviewing other women meant there was an immediate bond".<sup>21</sup> Alison adds that although she did not share anything with the interviewees other than gender and in some cases social class, she felt that she had a good rapport.<sup>22</sup>

In my experience, I felt that I had good connections with almost all interviewees. The interviews were more like 'conversations' that naturally grew, instead of one side always asking the questions and the other side answering. Several interviewees wanted to meet again and talk more. During the fieldwork, although such a rapport felt the correct way, after the fieldwork and reflecting back on it, I pondered about my personal motivation for providing

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<sup>18</sup> *ibid* 41.

<sup>19</sup> Ioannis Armakolas's experience is further examined below. See Ioannis Armakolas, 'A Field Trip to Bosnia: The Dilemmas of the First-Time Researcher' in Marie Symth and Gillian Robinson (eds), *Researching Violently Divided Societies: Ethical and Methodological Issues* (United Nations University Press 2001) pp 165-183.

<sup>20</sup> Oakley (n 16) 48.

<sup>21</sup> Miranda H. Alison, *Women and Political Violence: Female Combatants in Ethno-National Conflict* (Routledge 2009) 25.

<sup>22</sup> *ibid*.

a good rapport with my interviewees. I questioned my attitude and how much of it was natural and how much of it was in order to collect more and desired information from the interviewees. I found out that many feminist scholars had the same uncomfortable feeling and questioned the ‘feminist approach’ during the interviews. Does being a feminist and writing about women require such a bonding? Diane L. Wolf in her overview on the feminist literature explores that for feminists

“being objective and value-free is not only impossible, since we all carry experiences and values that shape our vision and interpretations and since, by virtue of our presence as outsiders, we intervene in the normal flow of life but it is also *undesirable*.”<sup>23</sup>

Wolf observes that ‘rational’, distant, uninvolved and hierarchical relationships, for feminists, are interpreted as a male-form of interpersonal dynamics.<sup>24</sup> However, Wolf’s point is also problematic since ‘not too distant’ interviews can create different issues. Although I certainly believe that during my fieldwork a good bonding existed almost in all interviews, I am also aware of the consequences of this bonding. These close relationships can create an atmosphere where the interviewees would feel closer and become willing to talk about their intimate experiences and memories easily. Regardless of the reason why such a bonding occurs, the researcher should be cautious during the interviews since the close relationship can enable the interviewees to open up their bitter memories of the war.<sup>25</sup> To prevent this breaking down, the Sussex University Ethics Committee required me to take some measures for any potential trauma that the interviews could cause. My internship in a women’s rights NGO helped me be in touch with the NGO’s psychologists and psycho-therapists that I could any time ask for help in such situations. Based upon both my and relevant scholars’ experiences, it can be concluded that no matter where the bonding comes from (if it comes at all), the researcher should be cautious with the consequences of the bonding: the main principle must be ‘do no harm’.

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<sup>23</sup> Diane L. Wolf, ‘Situating Feminist Dilemmas in Fieldwork’ in Diane L. Wolf (ed.), *Feminist Dilemmas in Fieldwork* (Westview Press 1996) pp 1-55, 4.

<sup>24</sup> *ibid.*

<sup>25</sup> Dixit (n 3) 138.

As Pam Bell rightly pointed out, many researchers believe that interviewees actually benefit from the interviews; however, this is likely to be a self-justification.<sup>26</sup> Researchers must be aware of the wounds that they open and must take the responsibility for providing solutions to “deal with the flood of strong emotions”.<sup>27</sup> This only happened during my fieldwork when I travelled to Srebrenica with the NGO in which I was an intern. There, I was not interviewing; however, as an intern and as a researcher I was making observations. Listening to the Mothers of Srebrenica was a highly emotional experience. Although I did not personally feel like I needed psychological support afterwards, I was concerned about the Mothers. The travel included the members of the NGOs; thus, having the members of the NGOs who have an experience with war victims and witnesses was reassuring as the Mothers were surrounded with people who had experience on dealing with such traumas.

All in all, researchers have a responsibility to abstain from worsening the situations of those whom they study.<sup>28</sup> This responsibility and all ethical dilemmas and challenges become more significant in conflict-related projects.<sup>29</sup> I attempt(ed) to take all the measures to ‘do no harm’ both during and after the fieldwork. The interviews were conducted in a ‘democratic way’ by returning the interview transcripts to the interviewees and asking them if they would like to make any change. I definitely agree with Wolf when she asserted that “(t)here is a great deal of research about women by women, but there is not much academic feminist research ‘with’ and ‘for’ women”.<sup>30</sup> Both the interviews and writing-up has been carried out with these concerns in mind. This is not to say that I achieved writing ‘with’ and ‘for’ women; I am fully aware of the fact that eventually the researcher holds the power “from conceptualization to writing”.<sup>31</sup>

### **3. Positioning in a Conflict-Affected Society as a Researcher (Insider/Outsider Dilemma): A Reflective and Comparative Analysis**

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<sup>26</sup> Pam Bell, ‘The Ethics of Conducting Psychiatric Research in War-Torn Contexts’ in Marie Symth and Gillian Robinson (eds), *Researching Violently Divided Societies: Ethical and Methodological Issues* (United Nations University Press 2001) pp 184-192, 185.

<sup>27</sup> *ibid.*

<sup>28</sup> Albrecht Schnabel, ‘One Size Fits all? Focused Comparison and Policy-Relevant Research on Violently-Divided Societies’ in Marie Symth and Gillian Robinson (eds), *Researching Violently Divided Societies: Ethical and Methodological Issues* (United Nations University Press 2001) pp 193-206, 193.

<sup>29</sup> Bell (n 26) 190.

<sup>30</sup> Wolf (n 23) 3. For an exception, see Cynthia Cockburn, *The Space between Us: Negotiating Gender and National Identities in Conflict* (ZED Books 1998).

<sup>31</sup> Wolf (n 23) 19.

Researchers have a responsibility “to minimize his or her own or others’ exposure to violence”.<sup>32</sup> This becomes especially important when the fieldwork takes place in a conflict or post-conflict area.<sup>33</sup> Minimizing the risks naturally creates a practice in which researchers prefer to locate themselves in ‘safe zones’. However, it is interesting to note that ‘safe’ is a highly subjective concept. It does not depend on whether armed conflicts still exist; the safety of the location depends on the identity of the researcher (among others). In this section, I reflect back on my fieldwork in terms of positioning myself as a researcher in Bosnia and Herzegovina. I both analyse my own experience and relevant literature on this. These reflective and comparative analyses suggest that for a researcher, finding a safe zone (being an *insider*) is not independent from the researcher’s (most of the time *attributed*) identities. This may create as a result a circle where positioning somewhere ‘safe’ as a researcher may result in gaining limited information.

Access to conflict-affected areas “may depend on a number of factors such as security issues, identity of the researcher, funding of the research”<sup>34</sup> among others. As Jonathan Goodhand pointed out, research “within an intensely political environment”, which is the case for most of the conflict-affected areas, “is unlikely to be viewed by local actors as neutral or altruistic”.<sup>35</sup> To deal with this ‘problem’, Goodhand recommends researchers access to the conflict-affected areas “through aid agencies who are already working on the ground”.<sup>36</sup> Goodhand’s idea seems to be adopted by other scholars. Meha Dixit concurs with Goodhand and adds that, “besides aid agencies, other local and international organisations working in the field can be extremely helpful” for the researchers.<sup>37</sup> My own experience goes along with these ideas and recommendations.

I contacted Medica Zenica, an expert NGO in Bosnia and Herzegovina that offers psycho-social and medical support to women and children victims of war and post-war violence, before I left the UK for my fieldwork. After a skype interview, I was accepted for the internship position. It was, borrowing Dixit’s words above, ‘extremely useful’ throughout the fieldwork. In addition to gaining experience and learning about Medica Zenica’s projects

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<sup>32</sup> N. Patrick Peritore, ‘Reflections on Dangerous Fieldwork’ (1990) 21 *The American Sociologist* 359, 359.

<sup>33</sup> I use ‘conflict-affected areas’ in this chapter to describe both conflict and post-conflict areas.

<sup>34</sup> Dixit (n 3) 134.

<sup>35</sup> Jonathan Goodhand, ‘Research in Conflict Zones: Ethics and Accountability’ (2000) 8 *Migration Review* 12, 12.

<sup>36</sup> *ibid* 13.

<sup>37</sup> Dixit (n 3) 134.



during my internship, I felt that my internship has been an important factor in reaching out to my interviewees. When I contacted the potential interviewees via emails or telephones, I introduced myself by highlighting my internship position in Medica Zenica. I felt that being an intern in such a well-respected and widely-esteemed NGO helped me immensely.

Except for a few people, most of the people whom I contacted replied to my interview request with a positive answer. I was able to reach highly respected NGOs' heads and senior officers in governmental and regional institutions. During the interviews, the interviewees were generally friendly. Either in the beginning or at the end of the interviews, the interviewees asked me to pass their kind regards to the head of the NGO that I was interning with. Considering the researchers' experiences in conflict-affected areas, this made me feel that I was an 'insider'. Many researchers encountered persons who were reluctant to talk to them since the "researchers tended to take up their time and then simply disappear with the information".<sup>38</sup> In contrast, I have received 'thanks' at the end of several interviews. Two of them were especially important for me. The first one came from an NGO head; she told me "Thank you for choosing Bosnia and Herzegovina as your case study. It could have been any other post-conflict country, but you preferred us."<sup>39</sup> The second one came from a genocide survivor which was particularly important to me: "Thanks for studying Bosnia and Herzegovina. Sometimes, as victims it is hard for us to make our voices be heard, so we need foreigners like you who come and let our voices be heard."<sup>40</sup>

Other than the internship, what were the other factors that enabled my fieldwork? I started to question and make a reflective analysis by taking into consideration my thesis topic. Was studying women and mostly talking to women as interviewees a reason for me 'being an insider'? Can gender be a key for access to the interviewees? In their overview on the literature, Sharan Merriam *et al.* described two significant feminist bodies: Although one body says that intimacy directly occurs when women interview women,<sup>41</sup> the other body says that racial lines play a more essential role. Merriam *et al.* assert that both approaches "discount

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<sup>38</sup> See Baines (n 4) 151.

<sup>39</sup> Field Notes (16<sup>th</sup> June 2018).

<sup>40</sup> Field Notes (27<sup>th</sup> July 2018).

<sup>41</sup> Oakley (n 16) and Janet Finch, "It is Great to Have Someone to Talk to": Ethics and Politics of Interviewing Women' in Martyn Hammersley (ed.), *Social Research: Philosophy, Politics and Practice* (Sage Publications 1993) pp 166-180, 167.

the intersections of societal barriers omnipresent in a hierarchical world”.<sup>42</sup> Many scholars have found it difficult to identify themselves as an insider even when their sex is the same with the interviewees. Dixit argues that when she interviewed with former girl soldiers in Sierra Leone, she found herself as an insider since she is a woman; however, there were other factors such as nationality, race or religion that made her feel like an outsider *at the same time*.<sup>43</sup>

Abdi M. Kusow’s fieldwork experience challenges the nationality factor for being an insider: Kusow as a native researcher among Somali immigrants in Canada had difficulties in reaching out to female members of his community.<sup>44</sup> Kusow underlines the significance of context at stake and argues that in his experience cultural or racial similarities or differences did not determine his insider or outsider status: gender did.<sup>45</sup> He suggests that a female researcher who is culturally outsider would have gained access easily in a Somali society which is segregated along gender lines.<sup>46</sup> ‘Being insider’ is partial; researchers can be insider and outsider interchangeably during their fieldwork since they bring with them not only a national identity but also “a certain educational level, gender, age, and a particular social-class background”.<sup>47</sup> As a result of this, while in some contexts they are drawn closer, in others they are thrust apart.<sup>48</sup>

In my experience, there were many occasions that I felt as an insider. During the interviews with the NGO heads I was offered food, fruit or tea most of the time. One interviewee gave me a lift. Although I do think that my research topic (having in mind my feminist approach) was influential in such a treatment in addition to my internship, I do not agree with Oakley and Finch that it was the only bonding element. I consider ‘age’ as an ignored but very important factor. In the beginning of my internship, I heard from one NGO worker how happy she was to see a ‘young woman’ coming to the NGO instead of an ‘old lady’. Although this was not said within the context of interviews, I do believe that my age and status (student) has been a factor for me to be perceived as a ‘non-hazardous’ insider.

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<sup>42</sup> Sharan Merriam *et al.*, ‘Power and Positionality: Negotiating Insider/Outsider Status in Multicultural and Cross-cultural Research’ (2000) paper presented in Adult Education Research Conference <<http://newprairiepress.org/cgi/viewcontent.cgi?article=2241&context=aerc>> accessed 3 October 2018, 1.

<sup>43</sup> Dixit (n 3) 136.

<sup>44</sup> Abdi M. Kusow, ‘Beyond Indigenous Authenticity: Reflections on the Insider/Outsider Debate in Immigration Research’ (2003) 26 *Symbolic Interaction* 591, 594.

<sup>45</sup> *ibid* 597.

<sup>46</sup> *ibid*.

<sup>47</sup> Hockey (n 15) 203.

<sup>48</sup> Kirin Narayan, ‘How Native is a “Native” Anthropologist?’ (1993) 95 *American Anthropologist* 671, 676.

Although I found (or just felt) myself as an insider, my nationality was simultaneously making me an outsider, both because of the language skills and also because of the lack of experience regarding the history or current context. However, I found it very useful since this resulted in much more explanations than a Bosnian would receive. Insiders are assumed to already know ‘things’ since they are one of ‘them’.<sup>49</sup> However, outsiders are able to elicit fuller explanations.<sup>50</sup> I have observed during the interviews, the interviewees were kindly explaining the full details of each incident they were mentioning. This enabled me, for example, to learn more about the context of the incident. I concur with David Hellowell when he said, “being an insider researcher is not necessarily the same as being currently a member of the organisation being researched”.<sup>51</sup> Different identities, other than nationality, come forward during the interviews as a result of the topic researched or current social, political, cultural contexts; all these factors are influential in the researcher’s insider/outsider status.

Alison says, “I do not believe it is possible to tease out all the impacts and implications of my layers of identity and structural positioning in regard to that of my interviewees”.<sup>52</sup> An explanation for this is that the interviewing phase in qualitative research is “ever changing and dynamic” in itself.<sup>53</sup> Each individual interview is “a special unit of work unto itself”.<sup>54</sup> Therefore, being an insider is something difficult to give prescription for. The main reason for this is that the researchers most of the time have ‘ascribed’ or ‘attributed’ statuses rather than ‘acquired’ statuses.<sup>55</sup> The eligibility criterion for inclusion is mostly decided (at least at the initial phase) on the basis of “who you are rather than what you are (in the sense of status being contingent on role performance)”.<sup>56</sup> This brings me to my last point in this section: my national identity. I try to give a comparative analysis between my experience and Ioannis Armakolas’s experience in Bosnia and Herzegovina.

The researchers are commonly asked: ‘What is the purpose of their research?’, ‘Who is financing the research?’, ‘What do they aim to do with the data?’<sup>57</sup> These were the questions

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<sup>49</sup> Merriam (n 42) 8.

<sup>50</sup> *ibid.*

<sup>51</sup> David Hellowell, ‘Inside-Out: Analysis of the Insider-Outsider Concept as a Heuristic Device to Develop Reflexivity in Students Doing Qualitative Research’ (2006) 11 *Teaching in Higher Education* 483, 484.

<sup>52</sup> Alison (n 21) 25.

<sup>53</sup> Dixit (n 3) 136.

<sup>54</sup> *ibid.*

<sup>55</sup> Robert K. Merton, ‘Insiders and Outsiders: A Chapter in the Sociology of Knowledge’ (1972) 78 *American Journal of Sociology* 9, 11.

<sup>56</sup> *ibid.*

<sup>57</sup> Peritore (n 32) 361.

that I was asked both when I was in Bosnia and Herzegovina and also during the skype interview for the internship. Later, when I asked the NGO head about the reasons why she accepted my internship application, I received two answers for this question: First of all, she said that I was from Turkey and such a sympathy was born without any effort from me. And the second reason was my scholarship from the Turkish Government which gives the impression that I hold a prestigious funding for my studies. As Dixit rightly puts forward, definitions of insider and outsider go beyond nationality; a researcher belonging to a different country but the same religion (with 'attributed' same point of view) may be perceived more cordially than a researcher of the same country but of a different religion or ethnicity.<sup>58</sup> I consider my easy-access to the interviewees and to the internship position within this framework. As has been underlined in the literature, "not being a member of a group does not denote complete difference" and vice versa.<sup>59</sup>

According to my experience, a significant point here is that there is a strong relationship between the identity of the researcher and the information gained. As Marie Smyth rightly identified, "who conducts the research has implications for the way the research is conceptualised, carried out, analysed and subsequently used".<sup>60</sup> Even if the researcher aims to reach the data 'from all sides', the ideas and thoughts attributed to the researcher can be an obstacle for this goal. To elaborate this, I give an example from my fieldwork experience. In order to conduct interviews with Serbian women and NGOs in Republika Srpska, I arranged an interview in Banja Luka which is the capital city of Republika Srpska and located in the north-western part of Bosnia and Herzegovina. On the same day of the interview, there was a preparation for a march against genocide in Banja Luka on the anniversary day of Srebrenica Genocide (11<sup>th</sup> July). My friend from the NGO told me about the march, not in a serious way but in a daily conversation. When I heard about the march, I remembered my previous readings about the riots during a ceremony occurred in Banja Luka in 2001, resulted in injuries.<sup>61</sup>

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<sup>58</sup> Dixit (n 3) 147.

<sup>59</sup> Sonya C. Dwyer and Jennifer L. Buckle, "The Space Between: On Being an Insider-Outsider in Qualitative Research (2009) 8 *International Journal of Qualitative Methods* 54, 60.

<sup>60</sup> Marie Smyth, 'Introduction' in Marie Smyth and Gillian Robinson (eds), *Researching Violently Divided Societies: Ethical and Methodological Issues* (United Nations University Press 2001) pp 1-11, 7. See also Ivor Sokolić, *International Courts and Mass Atrocity: Narratives of War and Justice in Croatia* (Palgrave 2018) Methodology, pp 8-17, 13.

<sup>61</sup> 'Diplomats trapped in Bosnia riots' (7 May 2001) <<http://edition.cnn.com/2001/WORLD/europe/05/07/bosnia.violence/>> accessed 3 October 2018. See also 'Violence at Bosnia Mosque Ceremony' (18 June 2001) <<http://news.bbc.co.uk/1/hi/world/europe/1393921.stm>> accessed 3 October 2018.

Although the march was cancelled in Banja Luka in the morning of the proposed day, I recognise this moment as a point where I needed to take initiative as a researcher and decide whether I would go and conduct the interview or not. At the end, I cancelled the meeting and managed to meet with the same interviewee on a different day in a different place. However, this has been an experience showing how the identity and the data that the researcher would gain are strictly connected. Even though the researcher has a goal to be ‘objective’, attributed identity can be an obstacle and the researcher might feel the requirement of prioritising her own security since the researcher’s main responsibility is to ‘do no harm’ and to avoid and minimise any possible harm to herself and to interviewees.<sup>62</sup> As Bell highlighted, it is the responsibility of the researchers “to be acutely aware of the particular needs of a sensitive population and to accommodate and adapt when necessary”.<sup>63</sup> My decision on the cancellation of the meeting can be considered in this perspective. A talk, possibly about the problems of the state structures and nationalist propagandas during that specific day could have resulted in unwanted consequences both for me and for the interviewee at stake.

A comparative reading and analysis between my own fieldwork and Ioannis Armakolas’s fieldwork enables me to analyse my fieldwork data more carefully and to identify and reflect back on my location and position over the course of fieldwork. Armakolas is a researcher who carried out his fieldwork in Bosnia and Herzegovina. He, as a researcher, locates himself in a town called Pale, which is in Republika Srpska and in which mostly radical and extremist Serbian factions live.<sup>64</sup> Armakolas’s research is about extremist Serbian youth groups; this explains why he chooses Pale as a base. However, ‘being able to choose Pale’ as a base has different reasons as he explains. One of these reasons, he says, was his nationality (Greek).<sup>65</sup> As Armakolas correctly pointed out, in conflict-affected areas, identities are particularly stable and fixed.<sup>66</sup> He underlines that his nationality was crucial “for establishing a significant level of trust with the people in the field”<sup>67</sup> since the Greeks were ‘on the right side’ in Serbs’ ‘geography of friends’.<sup>68</sup>

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<sup>62</sup> Marie Smyth and Gillian Robinson, ‘Conclusions’ in Marie Symth and Gillian Robinson (eds), *Researching Violently Divided Societies: Ethical and Methodological Issues* (United Nations University Press 2001) pp 207-209, 208.

<sup>63</sup> Bell (n 26) 186.

<sup>64</sup> Armakolas (n 19) 166.

<sup>65</sup> *ibid* 167.

<sup>66</sup> *ibid* 170.

<sup>67</sup> *ibid* 168.

<sup>68</sup> *ibid* 167.

As a researcher, I was aware of such automatic attributions and assumptions. In addition, I was aware that in conflict-affected countries, “there is little or no neutral space”.<sup>69</sup> However, differently from Armakolas my research topic was not about extremists; in contrast, I was doing my internship in an NGO which has strong connections and cooperation with women’s rights NGOs from all around Bosnia and Herzegovina. At the beginning of my fieldwork, I had a meeting with the head of Medica Zenica and she recommended me potential interviewees by analysing my interview questions. She specifically recommended that I go and learn from the experiences of women’s rights NGOs in Republika Srpska. I was strongly encouraged to hear the voices of ‘others’ to maintain objectivity. I travelled to Tuzla, Banja Luka, Jajce (among other cities) in order to gain information from Serbians and Croats as well.

However, these efforts do not necessarily mean that I created a neutral and objective thesis at the end. I consider every research as “a social process, occurring within particular sorts of social contexts and structures”.<sup>70</sup> I argue, in similar lines with Marie Smyth and Gillian Robinson, that the researcher is also a citizen with an identity.<sup>71</sup> Since I was aware of these hardships, I tried to contact women ‘from all sides’ but also women from different regions within Bosnia and Herzegovina (rural and urban). As Alison put it cordially, I, too, aimed to be only on the “side of women”.<sup>72</sup> I have aimed and tried to learn about women’s ideas and concerns about the ongoing transitional justice process in Bosnia and Herzegovina. Their voices via direct quotations are used. Their everyday violence experiences, and their observations regarding the root causes of the violence are presented. Their own evaluations regarding the successes and failures of the transitional justice process in Bosnia and Herzegovina are illustrated.

#### **4. The Interaction Between the Theoretical Framework of the Thesis and the Fieldwork**

Under the theory of gender transformative justice, violence against women has no end post-conflict. Violence takes different forms, and mostly passes to the ‘private’ sphere but

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<sup>69</sup> Smyth and Robinson (n 62) 208.

<sup>70</sup> Jane Ribbens, ‘Interviewing-An “Unnatural Situation”?’ (1989) 12 *Women’s Studies International Forum* 579, 591.

<sup>71</sup> Smyth and Robinson (n 62) 208.

<sup>72</sup> Alison (n 21) 29.

continues. The first goal of the fieldwork was to analyse and observe the forms that violence takes in post-conflict Bosnia and Herzegovina. Here, legal regulations and their implementation are of significance. The reason why there is a 'gender gap' between the law and implementation requires a socio-legal analysis. Context particularly matters. Gender transformative justice is born out of criticisms towards transitional justice since it is mostly applying 'one size fits all' solutions. In practice such an approach inhibits long-term solutions. A deep analysis of the context helps with understanding the reasons for the 'gender gap' and to take measures for that.

Second, under gender transformative justice, root causes of the violence and the structural violence become the primary issues to address. For my fieldwork, I created a specific question in order to receive an answer for the meaning of 'gender transformative justice' for women. I asked: 'What are the problems in this society which are preventing women from transforming their roles (despite the international and domestic efforts)?' This question helped me to hear the voices 'on the ground'. Most of the interviewees replied to this question by giving me 'patriarchy' as an answer. However, the answers, naturally, went beyond 'patriarchy' and the concept of 'patriarchy' became concrete. Women's elaboration of patriarchy by bringing forward examples from their daily lives have enriched my understanding on the 'gender gap'.

In addition to patriarchy, several women made a critical analysis of the current political system. This has been a point which I thought the transitional justice literature has not much written about. Interviewees underlined how the political system and women's rights are strictly connected and any further step or 'transformative' regulation is blocked by the political system in Bosnia and Herzegovina. This brought me to the point where I felt the need to highlight the power relations between law and politics. Holly Porter similarly noticed in her fieldwork that, not only the experiences of war alone, but a more holistic narrative regarding people's lived "continuums of war and peace, of violence and struggles for balanced" came to the fore in the interviews.<sup>73</sup>

This thesis is situated within the recently emerging field of socio-legal studies. In addition to law and all legal regulations, "the context in which law engages with a sociological understanding of women's experience of gendered violence"<sup>74</sup> is an essential component of

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<sup>73</sup> Holly Porter, 'After Rape: Justice and Social Harmony in Northern Uganda' (PhD thesis, LSE 2013) 25.

<sup>74</sup> Swaine (n 5) 46.

the thesis. Gender transformative justice theory prioritises the context. This leads this thesis to be framed around socio-legal studies which locate the laws in context. Such a concern with context “has often admitted a range of interdisciplinary approaches to the study of law”.<sup>75</sup> In order to apply the theory of gender transformative justice, fieldwork has become an essential requirement. The context this thesis is concerned with are the dynamics within the society and the problems regarding the implementation of the laws have been evaluated and pondered together. By doing this, ‘context-based’ and ‘relevant’ solutions and recommendations are made at the end of the thesis.

Over the course of interviews, similar to Alison, I undertook a semi-structured interview approach by using “a combination of direct and open questions”.<sup>76</sup> I highlighted the key questions (by tailoring the questions for each interviewee depending on their experiences or their expertise) and sent the questions to the interviewees together with the consent form and information sheet. During the interviews, instead of asking questions one after another, I maximised “the opportunities of participants for self-reflection”.<sup>77</sup>

The literature has a great deal of focus on domestic violence after the conflicts. Domestic violence has been widely researched and connected to the conflicts and considered under the concept of ‘continuum of violence’. However, in my interviews, I did not specifically ask questions around domestic violence. I preferred to ask wider questions regarding ‘ongoing violence after the conflict’. This enabled me to hear different experiences, not necessarily related to domestic violence. A consequence of this approach has been that many interviewees underlined the importance of economic and social rights and highlighted the ongoing violations of economic and social rights of women. This corresponds to the theory of gender transformative justice since it criticises the theory and practice of transitional justice for ‘only’ focusing on civil and political rights violations.

As a consequence of my fieldwork and my approach described above, various understandings of contested concepts came forward in the course of interviews. My understandings on the meaning of peace and violence have broadened. I concur with Carolyn Nordstrom and Antonius Robben’s argument that,

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<sup>75</sup> Dermot Feenan, ‘Foreword: Socio-Legal Studies and the Humanities’ (2009) 5 *International Journal of Law in Context* 235, 235.

<sup>76</sup> Alison (n 21) 26.

<sup>77</sup> *ibid* 26.



“there is no fixed form of violence. Its manifestation is flexible and transformative as the people and cultures who materialize it, employ it, suffer it, and defy it”.<sup>78</sup>

I avoided focusing only on violence that took place during the war. I asked, like Laura J. McLeod did, about interviewees’ “perceptions of contemporary problems” as well.<sup>79</sup> By doing this, different and broader interpretations and understandings of justice and gender transformative justice became apparent. I noticed how the interviewees’ experiences regarding the war become influential in their understanding on justice. For instance, the priorities and demands of a genocide survivor differed from those of NGO heads or politicians. This has been a normal response considering the varied forms of experiences of each interviewee during the war. As a consequence of this, I contextualised the ‘transformation’, ‘law’, ‘human rights’ and ‘justice’ concepts for the interviewee. I found out that these concepts carry the meaning that their speakers attribute to them.

The thesis ‘draws from the experiences of women’ and creates a critical perspective and analysis between law and gender, as it is the case for a feminist legal theory.<sup>80</sup> Observing the practice closely and hearing the voices of people ‘on the ground’ has the potential to counter ‘myths and stereotypes’.<sup>81</sup> Hearing the direct experiences of women challenged some ‘myths’ that I had been hearing before my fieldwork. Bosnia and Herzegovina is one of the post-conflict countries which has been generally used by the international community as a ‘good example’. However, “(l)ittle analysis has been done to ask what impact this actually has had on the process of peace, or for the women involved”.<sup>82</sup> This thesis took a feminist socio-legal approach to ask the ‘woman question’ and has been critical towards laws and NGOs’ projects which look ‘successful’ on the paper. The fieldwork and testimonies of women ‘on the ground’ enabled me to see how the ‘success’ of a transitional justice process in Bosnia and Herzegovina is constructed (through projects, funding, international involvement and

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<sup>78</sup> Nordstrom and Robben (n 7) 6.

<sup>79</sup> Laura Jane McLeod, ‘Gender Politics and Security Discourse: Feminist and Women’s Organising in “Post-Conflict” Serbia’ (PhD thesis, University of Sheffield 2010) 71.

<sup>80</sup> Katharine T. Bartlett and Rosanne Kennedy, ‘Introduction’ in Katharine T. Bartlett and Rosanne Kennedy (eds), *Feminist Legal Theory: Reading in Law and Gender* (Westview Press 1991) pp 1-11, 1.

<sup>81</sup> Goodhand (n 35) 14.

<sup>82</sup> Baines (n 4) 150.

so on). The interviews enabled me to see the gap between this constructed image and the image that interviewees' ongoing experiences shape.

As Porter rightly pointed out, although, for instance, the continuum of violence has been commonly noticed and noted by feminist scholars, "there is little discussion of the implications for transitional justice".<sup>83</sup> Although transitional justice literature focusing on women's experiences and rights is growing, there is a need to talk about the implications of these findings for transitional justice. This was a personal dilemma and challenge during my fieldwork. At some points, while listening to the experiences of my interviewees, I found myself often asking, 'How and where does this locate in the transitional justice literature?', 'What does this individual woman expect from transitional justice as a response to her everyday experience of violence?', 'How can I connect transitional justice and the 'justice' demands of the interviewee concerned?', 'How can I locate or interpret the "personal senses of security"<sup>84</sup> of women to the theory and practice of transitional justice?' It is a fact that gender transformative justice theory is nascent; and basically, grows through and upon the criticisms towards transitional justice. To concretise the concept of 'gender transformative justice,' I consider my fieldwork as a helpful experience. Over the course of interviews, the problems with transitional justice have been clarified and women's demands gave me insights into 'what is gender transformative' in this context.

For instance, in my fieldwork I had an opportunity to observe the main lines of gender transformative justice. The theory of gender transformative justice proposes the interdependence and indivisibility of economic and social rights and civil and political rights.<sup>85</sup> Women interviewees' economic and social rights demands echoed with this principle of gender transformative justice. I agree with Catherine O'Rourke when she proposed the term of "web of gender-based harms":<sup>86</sup> I claim the necessity of addressing both civil and political rights and economic and social rights in the periods of transition based upon my experience in the field.

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<sup>83</sup> Porter (n 73) 42.

<sup>84</sup> McLeod (n 79) 50.

<sup>85</sup> See Chapter 2.

<sup>86</sup> Catherine O'Rourke, *Gender Politics in Transitional Justice* (Routledge 2013) 237. See also Fionnuala Ní Aoláin, 'Transformative Gender Justice?' in Paul Gready and Simon Robins (eds), *From Transitional to Transformative Justice* (CUP 2019) pp 150-171.

International organisations' 'top-down' projects, which do not consult with or involve in grassroots initiatives, was another problem both gender transformative justice and my interviewees raised. On reflection, the interviews and my personal experiences enabled me to see the problems with the transitional justice process in Bosnia and Herzegovina and to observe the necessity of a gender transformative justice approach in the end. Therefore, the data gathering process has been about understanding the nature of gender transformative justice in and of itself by focusing on the in-depth semi-structured interviews that I have conducted.

## 5. Conclusion

Before analysing the implementation of gender transformative justice theory in the case study of Bosnia and Herzegovina, this chapter examined the fieldwork process itself. In the chapter, data gathering methods during the fieldwork have been elaborated. Since war victims and witnesses, among others, have been interviewed in order to gather data, ethical principles have been crucial while conducting the fieldwork. For conflict-affected case studies, the 'do no harm' principle is highly significant. This principle is broad enough to comprise all the measures which need to be taken in different contexts and for varied stakeholders. I brought forward the ways in which the principle of 'do no harm' has been concretised over the course of my own research study.

It has been argued in this chapter that there is an inextricable link between the identities of the researchers and the data gathered. The literature on social research in conflict-affected countries illustrates that (attributed) identities of the researchers impact the way fieldwork is conducted and interviewees are selected. By providing a comparative and reflective analysis, I scrutinised my position during my fieldwork. I examined how my varied identities (sometimes simultaneously) have been both relevant and central to my fieldwork experience and the data gathering process.

Finally, this chapter discussed why in order to contribute to the development of gender transformative justice theory and practice, field research is necessary. By illustrating the ways in which gender transformative justice and conducting fieldwork interact, the chapter depicted how the fieldwork was an essential part of the research. Such an examination both justifies conducting fieldwork for the purpose of the thesis, and briefly sheds light on the

contributions that field research provided this thesis with. This chapter aimed to enable the readers to gain insight about *how* the data, which is analysed in Chapters 7 and 8, has been gathered by the present researcher.

## CHAPTER 7: FIELDWORK FINDINGS 1 – REVEALING THE CONNECTIONS BETWEEN THE FIELDWORK FINDINGS AND GENDER TRANSFORMATIVE JUSTICE MODEL

“You cannot build peace if you ignore violence, the consequences of violence and the reasons for violence.”<sup>1</sup>

### 1. Introduction

As discussed in the previous chapter, this study is based on a socio-legal approach. Interaction with other disciplines and going beyond the legal frameworks and doctrinal analyses have been the main principles guiding along. As examined before,<sup>2</sup> criticisms of transitional justice, which is the point where gender transformative justice is raised and on which it is based, necessitate “looking beyond the legalism”.<sup>3</sup> In order to meet this goal, implementation of the existing legal regulations has been the main concern of the thesis in order to understand where exactly women ‘lose’. Gender transformative justice theory is a nascent theory. So, the field study makes an important contribution by examining the theory and its discourse on the ground. Paul Gready and Simon Robins underline this point and address the need for more practical data regarding the implementation of transformative justice in general.<sup>4</sup>

This chapter is to present and analyse my fieldwork data in the light of the transformative justice literature through a gender lens. There is a nascent literature on transformative and gender transformative justice: this requires more engagement with the field. I bring data from the fieldwork in order to test the extent to which gender transformative justice reflects what happens in the field. This detailed analysis demonstrates the interrelationship between the theory and practice. Such an analysis confirms my point that a need for gender transformative justice exists. Beyond this, data from the fieldwork sheds light on unexplored concerns and

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<sup>1</sup> Interviewee 1.

<sup>2</sup> See Chapter 2.

<sup>3</sup> See Kieran McEvoy, ‘Beyond Legalism: Towards a Thicker Understanding of Transitional Justice’ (2007) 34 *Journal of Law and Society* 411.

<sup>4</sup> Paul Gready and Simon Robins, ‘From Transitional to Transformative Justice: A New Agenda for Practice’ (2014) 8 *International Journal of Transitional Justice* 339, 361. See also Paul Gready *et al.*, ‘Transformative Justice: A Concept Note’ (October 2010) <[http://www.wun.ac.uk/files/transformative\\_justice\\_-\\_concept\\_note\\_web\\_version.pdf](http://www.wun.ac.uk/files/transformative_justice_-_concept_note_web_version.pdf)> accessed 3 October 2018, 1.

dilemmas of both experts and victims which can be discussed in the scope of gender transformative justice.

During the interviews, the points emphasised by the interviewees overlapped with academic criticisms raised in relation to the shortcomings of transitional justice. To demonstrate the relationship between the theory and practice, I address the following prevalent tropes which have been suggested as principles of gender transformative justice theory in this thesis<sup>5</sup>: *contextuality, addressing the root causes of the conflicts, and going beyond the legal justice.*

## 2. Contextuality

There have been a great number of investigations into the causes of the failures in post-conflict societies. One of the crucial causes of this failure has been the neglect of the context. When the four key mechanisms of transitional justice have been identified as prosecution initiatives, truth-seeking processes, reparations programmes, and institutional reforms,<sup>6</sup> these mechanisms have started to be applied in all post-conflict societies regardless of the priorities, expectations, and needs of the local communities. Decisions regarding the provision of justice in post-conflict societies are too often made without consulting the society affected.<sup>7</sup> Erin Daly is one of the keen supporters of the idea of ‘contextuality’. Daly considers contextuality to be the primary focus of transformative justice. According to Daly,

“Each country's transitional path consists of a unique constellation of social, historical, political, economic, ethnic, racial, religious, military and other factors; these factors distinguish each transition from the others; and it is these differences in transitions that compel different institutional responses to past wrongs. What works in one place will not necessarily work in another. This contextuality is critical to the transformational project.”<sup>8</sup>

Interviewee 1 stressed that, in her opinion, context had not been addressed in the peacebuilding process in Bosnia and Herzegovina:

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<sup>5</sup> See Chapters 2 and 3.

<sup>6</sup> See Ruti Teitel, *Transitional Justice* (OUP 2000).

<sup>7</sup> Wendy Lambourne, ‘Transitional Justice and Peacebuilding after Mass Violence’ (2009) 3 *International Journal of Transitional Justice* 28, 28.

<sup>8</sup> Erin Daly, ‘Transformative Justice: Charting a Path to Reconciliation’ (2002) 12 *International Legal Perspectives* 73, 77.

“After the war, a lot of researchers and activists came to Bosnia. They just produced a quick knowledge about peacebuilding, *as if it is a new life after the conflict*. But often this quick knowledge did not work in practice. Our tradition, our culture should be included.”<sup>9</sup>

In the same vein, Interviewee 4, a politician, emphasised that,

“Bosnia is a specific country like every other country. We have our own tradition. You just cannot come and implement the mechanisms and laws from other countries, like European countries. They will not work here.”<sup>10</sup>

Bosnia and Herzegovina has been a country in which different justice mechanisms have been tested. International actors went to the country and “act(ed) like they know everything about Bosnia and Herzegovina”.<sup>11</sup> However, the justice mechanisms should be applied and prioritised according to the needs and expectations of the society at stake. So how can the contextuality principle of gender transformative justice be achieved? What are the means for providing this principle? When the contextual needs are prioritised and protected, whose needs are primarily involved? Although the term seems easy to define, more elaboration is needed in order to understand how it could possibly work in practice. Under the theory of transformative justice, since “each country’s path from past to future is unique”, the justice process should be appropriate to each nation’s trajectory.<sup>12</sup> This means that if a country prefers retributive justice, trials get prioritised. Or if a country prefers to establish reconciliation and to ‘forgive and forget’, amnesties can be provided. Similarly, institutional reforms might be prioritised in order to guarantee non-repetition. In practice, however, it is still difficult to identify ‘the context’.

When it is suggested that the country at issue should decide on its own path for justice, ‘who’ exactly are addressed, allowed and privileged to decide? Can we identify and concretise one single understanding of justice for a whole society? Paul Gready and Simon Robins help answering these questions. They claimed that a transformative approach needs to be “context-dependent, *driven by the local and (...) consider the diversity of understandings that might*

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<sup>9</sup> Interviewee 1 (emphasis added).

<sup>10</sup> Interviewee 4.

<sup>11</sup> Interviewee 2.

<sup>12</sup> Daly (n 8) 113.

*exist*”.<sup>13</sup> According to Gready and Robins, it is the ‘local’ who decide on and leads us to figure out ‘the context’. These ideas are reflected in the words of Interviewee 26:

“When you approach a post-conflict community, you need to approach it with a very bottom-up approach; meaning that you analyse the local issues that they have and then you try to come up with feasible solutions: how to not only help that community but also engage them in terms of changing them and letting them be part of the change processes within their local community. (...) *At the end of the day, it is the local problems which reflect the overall situation in Bosnia and Herzegovina.*”<sup>14</sup>

Both the literature and the interviewees agree on the need for an inclusive peace-building process. ‘Local’ is, however, very ambiguous and too broad term to be decisive on who is included. Another prominent transformative justice scholar, Wendy Lambourne, clarified this and narrowed it down by underlining that the “needs, expectations and experiences of the conflict participants – the perpetrators, victims, survivors and other members of society directly affected by the violence”<sup>15</sup> should play a decisive role in the peace process. For transformative measures, the need for a victim-centred approach is repeatedly pointed out within the literature.<sup>16</sup> The extent to which a victim-centred approach has been applied in Bosnia and Herzegovina is, however, complicated.

Interviewee 26 underlined that,

“Within my experience of working directly with victims, I observe that victim associations are not funded by international donors, not even one single organisation. Victim associations do apply for international funds from the EU, for example. Most of the time, these organisations are applying because of the issues that are affecting survivors and victims themselves. Their applications are

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<sup>13</sup> Gready and Robins (n 4) 344 (emphasis added).

<sup>14</sup> Interviewee 26 (emphasis added).

<sup>15</sup> Lambourne (n 7) 29.

<sup>16</sup> See Fionnuala Ní Aoláin, Catherine O’Rourke and Aisling Swaine, ‘Transformative Reparations for Conflict-Related Sexual Violence: Principles and Practice’ (2015) 28 *Harvard Human Rights Journal* 97, 141; Simon Robins, ‘Towards Victim-Centred Transitional Justice: Understanding the Needs of Families of the Disappeared in Postconflict Nepal’ (2011) 5 *International Journal of Transitional Justice* 75; Simon Robins, ‘Challenging the Therapeutic Ethic: A Victim-Centred Evaluation of Transitional Justice Process in Timor-Leste’ (2012) 6 *International Journal of Transitional Justice* 83.



not general in terms of what the call for the funding is. So, I can clearly say that victims' associations are not funded in the long run.”<sup>17</sup>

So, who decides which justice mechanism is needed in Bosnian society? Who is supported and funded for their initiatives by the international community? Whose voices are heard and whose peacebuilding initiatives are considered important? The answer is clearly not these unfunded victims and witnesses' associations.

I asked the interviewees their opinions regarding the International Criminal Tribunal for the former Yugoslavia (ICTY). My concern was to learn the extent to which the ICTY has answered Bosnian society's contextual needs. Interviewee 2 expressed that,

“The Hague Tribunal was the most important thing which happened to this area. Imagine if we did not even have a court ... Imagine if these crimes had never been documented and prosecuted ... .”<sup>18</sup>

However, contrasting opinions have been raised with regard to the ICTY. One non-governmental organisation's (NGO) head claimed that,

“(...) giving your testimony results in nothing good for you. What is worse is that giving your testimony against the perpetrators in Bosnia or even in The Hague results in nothing good to you. I am encouraging them [women who are wartime sexual violence survivors] to testify, to get out and to speak for their inner health, but I am not really sure if it is working. If I was a victim, I would move away from Bosnia and never come back. You cannot achieve anything; you just feel that you are only marked at the end of the day.”<sup>19</sup>

So even though the ICTY has been considered necessary for Bosnia and Herzegovina, problems with the court over-ride the justice which the tribunal has provided for some. The interviews confirm that international criminal accountability is only “*a partial component of the*

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<sup>17</sup> Interviewee 26.

<sup>18</sup> Interviewee 2.

<sup>19</sup> Interviewee 10.

*larger transformative agenda of gender justice.*”<sup>20</sup> These mechanisms are essential but remain limited in terms of providing gender transformative justice for the society at stake.

When asked about which transitional justice mechanisms are relevant and necessary in Bosnian society in order to gain an insight into the Bosnian context, Interviewee 2 commented that,

“I do think that retribution and reparations are crucial, and we also need psychological support and to fight against the stigma. However, in my opinion, *first of all*, there is no facing the past unless we deal with the basic things: for me it is dealing with the issue of impunity. *Later*, reparations: psychological and socio-economic support should be included in them. And *then* we can break the stigma and the silence and raise awareness and educate the whole society regarding what happened to these women.”<sup>21</sup>

It has been one of the findings of the fieldwork that the answer to the question of which transitional justice mechanism should be given priority depends on who replies to the question. The interviewees who had been direct victims of wartime violence prioritised retributive justice while interviewees who were not direct victims raised different priorities, such as the right to work, the right to education.

Interestingly, the comments made by Interviewee 2 raise striking theoretical questions. According to this interviewee, trials are the most important and urgent need in the society. Based on the trials, the victims should be provided with reparations (*transitional justice*). Then society could start addressing the stigma of wartime sexual violence and provide education and raise awareness with relation to wartime sexual violence (*gender transformative justice*) in Bosnia and Herzegovina. It is striking to see how an order has been given for transitional justice and gender transformative justice by this interviewee. However, this raises important questions: can we separate transitional and gender transformative justice from each other? Does gender transformative justice start after transitional justice has been completed? Is

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<sup>20</sup> Kirsten Campbell, ‘Gender Justice Beyond the Tribunals: From Criminal Accountability to Transformative Justice’ (2016) 110 *American Journal of International Law* 227, 231 (emphasis added).

<sup>21</sup> Interviewee 2.

there a linear relationship between them or are they too interwoven as processes to be separated from each other?

Much uncertainty exists in the literature about the relation between transitional justice and (gender) transformative justice. Lack of clarity regarding the mechanisms of transformative justice aggravates this ambiguity. For the purpose of this thesis, trials, reparations and other mechanisms of transitional justice can be transformative, *as long as they are aimed at providing gender justice in post-conflict societies*.<sup>22</sup> As has been argued, for instance, reparations can provide a symbolic dimension to victims by illustrating the acceptance of the injustice.<sup>23</sup> This is the case for gender transformative justice as well. Reparations could be given by accepting the survivors of wartime sexual violence as, for instance, war veterans. This would create a symbolic reparation and would create awareness at the same time. The literature provides a great amount of research on the problems with both international and domestic courts.<sup>24</sup> Women who testified have been through further trauma in these courts because of the gender-insensitive design of and approach in the courts. Therefore, the current thesis is not based on an understanding which assumes a linear relationship between transitional justice and gender transformative justice. It argues that transitional justice mechanisms can be gender transformative if they are re-designed and re-imagined with a gender-lens. Still, it is clear that this area is unexplored in the literature and further research is needed on this issue.

Getting back to the discussion of ‘contextuality,’ it has been claimed that contextuality can be provided through an “effective participation of civil society”.<sup>25</sup> “Local ownership and the participation of those most affected by the violence”<sup>26</sup> have been the main principles in order to provide transformative and gender transformative justice. Definitions of transformation

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<sup>22</sup> cf. Daniela Lai and Caterina Bonora, ‘The transformative Potential of Post-War Justice Initiatives in Bosnia and Herzegovina’ in Matthew Evans (ed.), *Transitional and Transformative Justice: Critical and International Perspectives* (Routledge 2019) pp 54-76.

<sup>23</sup> Rodrigo Uprimny Yepes, ‘Transformative Reparations of Massive Gross Human Rights Violations: Between Corrective and Distributive Justice’ (2009) 27 *Netherlands Quarterly of Human Rights* 625, 635.

<sup>24</sup> See Julie Mertus, ‘Shouting from the Bottom of the Well: The Impact of International Trials for Wartime Rape on Women’s Agency’ (2010) 6 *International Feminist Journal of Politics* 110; Julie Mertus, ‘When Adding Women Matters: Women’s Participation in the International Criminal Tribunal for the Former Yugoslavia’ (2008) 38 *Seton Hall Law Review* 1297; Kirsten Campbell, ‘The Gender of Transitional Justice: Law, Sexual Violence and the International Criminal Tribunal for the Former Yugoslavia’ (2007) 1 *International Journal of Transitional Justice* 411; Campbell (n 20); Serge Brammertz and Michelle Jarvis (eds), *Prosecuting Conflict-Related Sexual Violence at the ICTY* (OUP 2016); Henry Nicola, Anastasia Powell and Asher Flynn (eds), *Rape Justice: Beyond the Criminal Law* (Palgrave 2015); Priscilla Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (Routledge 2001).

<sup>25</sup> Lambourne (n 7) 35.

<sup>26</sup> Wendy Lambourne and Vivianna Rodriguez Carreon, ‘Engendering Transitional Justice: A Transformative Approach to Building Peace and Attaining Human Rights for Women’ (2016) 17 *Human Rights Review* 71, 86.

always underline the significance of the context and include the following factors: “being inclusive”,<sup>27</sup> “bottom-up understanding and analysis of the lives and needs of populations”,<sup>28</sup> and the “inclusion of the affected communities (...) in shaping the agenda for policy and practice”.<sup>29</sup> Such terminology underlines the importance of the participation of the ‘victims’. From a theoretical perspective, the inclusion of ‘victims’ in the process seems the answer to provide context-dependent solutions. However, the applicability of this presents a more complicated picture, especially in Bosnia and Herzegovina.

First, it should be emphasised that there is no shared category of ‘victims of Bosnia and Herzegovina’. Three ethnic groups claim to be the main victims of the war, and each of their narratives is based on the denial of the other ethnicities’ victimhood claims,<sup>30</sup> and thus of others’ ‘truth’.

“If you go to Republika Srpska, they will say that they are victims. If you go to the Federation of Bosnia and Herzegovina, they will say that they are. There is no clarity about who are victims so there is no system, there are no laws working.”<sup>31</sup>

This lack of a shared truth is one of the biggest obstacles to the creation of a truth and reconciliation commission (TRC). The lack of a shared consensus on ‘who is a victim?’ prevents the creation of mechanisms which can respond to the needs of Bosnian society.

Second, the fieldwork findings illustrated the fact that there is no victim group that we can mention even within one ethnic group. There are different victim groups within Bosniak victims, and there is an (invisible) hierarchy between them. Interviewee 26 pointed out that,

“I do not think victims and their personal experiences have been ever in the forefront in terms of dealing with the past. (...) we do not have a law against the denial of genocide in Bosnia and Herzegovina. We have a lot of victims of torture,

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<sup>27</sup> Gready *et al.* (n 4) 1.

<sup>28</sup> Gready and Robins (n 4) 340.

<sup>29</sup> Matthew Evans, ‘Structural Violence, Socioeconomic Rights, and Transformative Justice’ (2016) 15 *Journal of Human Rights* 1, 9.

<sup>30</sup> See for instance Jelena Subotić, *Hijacked Justice: Dealing with the Past in the Balkans* (Cornell University Press 2009); Ivor Sokolić, *International Courts and Mass Atrocity: Narratives of War and Justice in Croatia* (Palgrave 2018).

<sup>31</sup> Interviewee 10.

but we do not have a law for mental health of the survivors. When you look at the legal aspect, victims have never been at the forefront.”<sup>32</sup>

Interviewing with different actors in Bosnia and Herzegovina enabled me to observe the divisions within ‘victim’ groups. This observation goes along with terminology that Tshepo Madlingozi created in the South African context. According to Madlingozi, there is a split between victims who continue to struggle for social justice and those who argue that the past must be put behind them in order to focus on the future.<sup>33</sup> As Madlingozi argued, this “splitting of victims into ‘good victims’ and ‘bad victims’ is not unique for South Africa;” in all post-conflict societies where the oppressed (read direct victims) did not win the war, but an ‘elite compromise’ was reached, this “ensures that previous material and social privileges are maintained”.<sup>34</sup> There is a need to investigate who this elite is in Bosnia and Herzegovina and who tell people to forget the past and to move on. Interviewee 26 replied:

“When we work on projects, we always have to remind the NGOs of that ‘okay, Bosnia needs to move forward, but we have to recognise the consequences of the war first’”.<sup>35</sup>

The analysis of the Bosnian NGOs and their contribution to the peacebuilding is beyond the scope of this thesis. For the purpose of the thesis, however, the context needs to be understood, and whose participation is provided and cared for should be observed. In Interviewee 21’s words, ‘good victim-bad victim’ split has been more visible:

“The civil society in Bosnia is seen only through NGOs; this is problematic because they are part of a certain elite. They are never going to work to risk their income in order to look for the equality for all. If the victims are not their ‘target group’ of women, then they [the women victims at stake] are simply not included in the project.”<sup>36</sup>

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<sup>32</sup> Interviewee 26.

<sup>33</sup> Tshepo Madlingozi, ‘Good Victim, Bad Victim: Apartheid’s Beneficiaries, Victims, and the Struggle for Social Justice’ in Wessel le Roux and Karin van Marle (eds), *Law, Memory and the Legacy of Apartheid: Ten Years After AZAPO v President of South Africa* (PULP 2007) pp 107-126, 111.

<sup>34</sup> *ibid* 112.

<sup>35</sup> Interviewee 26.

<sup>36</sup> Interviewee 21.

However, Interviewee 26 underlined that the push for moving on comes from the top to the NGOs:

“The only side which is telling people to move on is the international community and donors of the NGOs. When it comes to survivors, they are not the ones saying that ‘we need to move on’. They are the ones saying that ‘we still have missing persons; we are still not protected by the law’. The only side in Bosnia and Herzegovina that is stating that ‘you need to move on’ is the international community. That is very top-down. I am still searching for my grandparents and for my uncle. If they are not found, that means I will have to continue searching them.”<sup>37</sup>

In order to address the contextuality principle of gender transformative justice, it is crucial to identify and determine who decides what is needed in Bosnian society for a peacebuilding process. In order to make the transitional justice more context-responsive, international involvement should be minimised in the decision-making stages. The decision needs to come from bottom-up. However, as we discussed, there is no one and only victim group nor a clear definition of ‘local’ in Bosnia and Herzegovina. The current practice isolates the direct victims and witnesses of the conflict and eliminates their expectations and needs from transitional justice process by privileging the co-opted victim groups. Such examination of the field has shown that there is a need for transformative justice scholars to deconstruct the term of ‘victim’. Although a transformative approach requires the inclusion of victim groups in order to provide context-dependent and context-relevant justice process, the practice indicates that there is a need for a further scrutiny on what is meant by ‘victims’ in the first place.

The elite in Bosnia and Herzegovina is not only the NGOs but also some political and religious actors in the community.<sup>38</sup> The politics is still based on the ethnic and religious divisions in Bosnia and Herzegovina; ethno-national victimhood remains crucial to postwar politics.<sup>39</sup> The constitutional and legal structures feed into ethno-nationalism. This creates a

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<sup>37</sup> Interviewee 26.

<sup>38</sup> Regarding the ‘elite problem’ see Pádraig McAuliffe, ‘The Problem of Elites’ in Matthew Evans (ed.), *Transitional and Transformative Justice: Critical and International Perspectives* (Routledge 2019) pp 77-99.

<sup>39</sup> Elissa Helms, *Innocence and Victimhood: Gender, Nation, and Women’s Activism in Postwar Bosnia-Herzegovina* (University of Wisconsin Press 2013) 5.

political elite who draws advantage from these divisions because the peacebuilding and transitional justice processes in Bosnia and Herzegovina left the root causes of the violence (ethno-nationalism and patriarchy, according to most of the interviewees) untouched, if not aggravated. Under the theory of gender transformative justice, elimination of the root causes is crucial. Now the chapter turns to analyse the next principle of gender transformative justice and its reflections in practice.

### 3. Addressing the Root Causes of the Violence

One of the goals and characteristics of gender transformative justice is to address the root causes of the wartime violence.<sup>40</sup> Transitional justice mechanisms have not usually investigated structural inequalities that comprise a basis for armed conflicts.<sup>41</sup> One criticism of much of the literature is based on the argument that transitional justice theory and practice have treated the symptoms “while leaving the underlying illness to fester”.<sup>42</sup> Transformative justice builds upon these criticisms and aims to “look at the communities affected by systemic violence with the aims to seek forms of justice that *break with the structures that may have led to violence in the first place*.”<sup>43</sup> In parallel with these purposes, during the fieldwork, my aim has been to identify these structures and to find out the extent to which these structures have been addressed and dealt with in the post-conflict reconstruction process.

I abstained from directing the interviewees to a specific answer by ‘explaining’ the main reasons for the wartime violence against women myself.<sup>44</sup> Instead of that, I preferred to ask the interviewees what they considered as the main reasons of the Bosnian war. I asked the extent to which the transitional justice mechanisms and legal regulations managed to address these main causes of wartime violence against women: this has been the ‘gender transformative justice question’ of the thesis. In line with the purpose of this thesis, I question the root causes of the gender-based violence both during and after the conflict and then I scrutinise the extent to which law has been able to address these causes.

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<sup>40</sup> Gready and Robins (n 4) 339.

<sup>41</sup> *ibid* 346. See also Paul Gready, *The Era of Transitional Justice: The Aftermath of the Truth and Reconciliation Commission in South Africa and Beyond* (Routledge 2011).

<sup>42</sup> Lisa Laplante, ‘Transitional Justice and Peace Building: Diagnosing and Addressing the Socioeconomic Roots of Violence through a Human Rights Framework’ (2008) 2 *International Journal of Transitional Justice* 331, 333. See also Gready and Robins (n 4) 340; Lambourne and Carreon (n 26) 72.

<sup>43</sup> Gready *et al.* (n 4) 2 (emphasis added).

<sup>44</sup> See Chapter 6 for a broader discussion on this.

The starting point for my inquiry is based on the theory of conflict transformation. As has been underlined repeatedly along the thesis, the main goal of thesis is to interact conflict transformation and transformative justice theories. By doing this through a gender analysis, I aim to further the theory of gender transformative justice. The theory of conflict transformation attaches great importance to understanding “the root causes and social conditions that give rise to violent and other harmful expressions of conflict”.<sup>45</sup> Lederach, as the founder of the theory, underlines that

“(t)ransformation negotiates both solutions and social change initiatives. It requires a capacity to see through and beyond the presenting issues to the deeper patterns, while seeking creative responses that address real-life issues in real time”.<sup>46</sup>

Such an approach requires understanding the deeper patterns of violence and at the same time addressing the everyday violence. These two cannot be thought separate according to both conflict transformation and transformative justice theories. It is because the reasons for everyday violence can only be removed from the society through elimination of deeper patterns of violence in the society, meaning structural violence. This idea underlying the theory of conflict transformation echoes with the words and expectations of my interviewees. Although domestic violence, economic violence and gender discrimination have been, among others, the complaints of the interviewees, these issues have been eventually connected to the broader problems within the society. For instance, although Bosnia and Herzegovina has signed and ratified all major international documents regarding women’s rights, including the Council of Europe (CoE) Convention on Preventing and Combating Violence against Women and Domestic Violence (known as Istanbul Convention),<sup>47</sup> the implementation of the laws remains sporadic. The interviewees overall addressed the patriarchal norms as the main reason for the lack of the implementation of the existing laws.

The interviewees overwhelmingly emphasised that the lack of representation of women in the parliament, named as political injustice under the theory of gender transformative justice,

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<sup>45</sup> John Paul Lederach, *The Little Book of Conflict Transformation* (Good Books 2003) 27.

<sup>46</sup> *ibid* 39.

<sup>47</sup> Esther Garcia Fransioli, ‘Annual Report on the State of Women’s Right in Bosnia and Herzegovina in 2013’ (2013) Sarajevo Open Centre Human Rights Papers, paper 2 <[http://soc.ba/site/wp-content/uploads/2014/04/Annual-Report-on-Womens-Rights\\_WEB.pdf](http://soc.ba/site/wp-content/uploads/2014/04/Annual-Report-on-Womens-Rights_WEB.pdf)> accessed 3 October 2018, 14.



is a consequence of ethno-nationalist politics. They underlined that in patriarchal and ethno-nationalist settings, gender becomes the lowest priority.<sup>48</sup> The fieldwork enabled me to observe the relationship between structural violence and everyday violence more clearly. The interviewees have made it clear that the legal regulations for gender equality remains frequently inapplicable in their everyday lives as a consequence of the structural violence, which has not been addressed by transitional justice mechanisms.

The interviewees underlined that ethno-nationalism-based divisions have been the root causes of the war and the reasons for the ongoing violence against women. Interviewee 22 highlighted that,

“We face a lot of nationalism. Political elites are ruling the country. The most important thing is ‘what is your nationality?’ Still, after more than 20 years later, we live in our national boxes. During the elections and in pre-election campaigns, everything is focused on national identities; they do not focus on gender, for example. Religious institutions get also connected. Because here our national identity is connected to our religion. You learn from these elites that being a woman and objecting to them is not acceptable at all”.<sup>49</sup>

In Bosnia and Herzegovina, transitional justice and peacebuilding processes have not alleviated nationalism. Starting from the peace agreement, the mechanisms divided the country more, instead of creating reconciliation. The Dayton Peace Agreement “divided the country in two entities and one district *on the basis of ethnicity*”.<sup>50</sup> Since the Constitution of Bosnia and Herzegovina was annexed to this peace agreement, from the constitution all legal hierarchy is regulated under an “ethnocentric citizenship”<sup>51</sup> regime. Although the European Court of Human Rights requested Bosnia and Herzegovina to change the Constitution and abandon ethnocentric citizenship,<sup>52</sup> changes are yet to come.

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<sup>48</sup> Interviewee 7.

<sup>49</sup> Interviewee 22.

<sup>50</sup> Interviewee 26 (emphasis added).

<sup>51</sup> Eldar Sarjlić, ‘The Bosnian Triangle: Ethnicity, Politics and Citizenship’ University of Edinburgh CITSEE Working Paper Series, Working Paper 2010/06 <[http://www.citsee.ed.ac.uk/data/assets/pdf\\_file/0004/108868/190\\_thebosniantriangleethnicitypoliticsandcitizenship.pdf](http://www.citsee.ed.ac.uk/data/assets/pdf_file/0004/108868/190_thebosniantriangleethnicitypoliticsandcitizenship.pdf)> accessed 3 October 2018, 17. See also Jelena Džankić, ‘The Politics of Inclusion and Exclusion: Citizenship and Voting Rights in Bosnia and Herzegovina’ (2015) 22 *International Peacekeeping* 526.

<sup>52</sup> See *Sejdić and Finci v Bosnia and Herzegovina* Applications Nos. 27996/06 and 34836/06 (ECHR, 22 December 2009).

How does this current practice affect women? In which ways are women's rights concerned with this regime? The Constitution of Bosnia and Herzegovina "does not provide for a general obligation to ensure a certain representation of the sexes (quota, proportion, or parity) in public life".<sup>53</sup> According to Annika Björkdahl, this constitution is on the same lines with general liberal constitutions of Western liberal democracies, although a quota system for women's participation to legislative, executive, and judicial branches was a hallmark of socialist Yugoslavia.<sup>54</sup> This could be considered in the scope of criticisms regarding contextuality.

The international community acted upon the idea that the war created a zero point and as Interviewee 21 pointed out "all the legal regulations with relation to gender equality prior to the war were all forgotten"<sup>55</sup> or basically ignored. Such a practice contradicts with conflict transformation. In order to provide conflict transformation, the widest possible participation is an essential requirement.<sup>56</sup> Similarly, transformative justice aims to prevent the previously marginalised groups from being re-marginalised again.<sup>57</sup> Inclusion of the most disadvantaged and marginalised groups to the peacebuilding process is one of the goals of both conflict transformation and gender transformative justice. However, the Bosnian peacebuilding process falls short of this requirement.

Alongside the Constitution, legal regulations are influential on women's rights as well. A fragmented structure created a situation in which different laws are practiced in different parts of the society. Interviewee 17 clarified the impact of this practice:

"Regarding the incrimination of domestic violence in the law, for instance, we have a huge difference between the entities. In the Republika Srpska, acts of domestic violence are incriminated doubly: both as a criminal act and a minor offense. This creates a huge issue. Usually, the Police and Office of the Prosecutor would characterise domestic violence as a minor offense only which basically means lower sentences, money fines, or conditional sentencing. In the

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<sup>53</sup> Annika Björkdahl, 'A Gender-Just Peace? Exploring the Post-Dayton Peace Process in Bosnia' (2012) 37 *Peace and Change* 286, 295-296.

<sup>54</sup> *ibid* 296.

<sup>55</sup> Interviewee 21.

<sup>56</sup> Diana Francis, 'Gender and Conflict Transformation' Committee for Conflict Transformation Support Review no 23, February 2004 <<https://www.c-r.org/downloads/newsletter23.pdf>> accessed 3 October 2018, 4.

<sup>57</sup> Paul Gready *et al.* (n 4) 11.

Federation of Bosnia-Herzegovina, domestic violence is considered and incriminated only as a criminal act. We are now trying for Republika Srpska to incriminate domestic violence only as a criminal act like the Federation.”<sup>58</sup>

In addition to the different practices in the same country, ethno-nationalist discourse created many other problems as well, such as, loss of the right to abortion fully for women from all three ethnicities.<sup>59</sup> As Interviewee 15 underlined;

“The right to abortion was widely-used in the former Yugoslavia. The first thing that the nationalists did was to abolish the right to abortion. Women had to fight a lot in order to take it back.”<sup>60</sup>

Since the peace process has been ‘gender-neutral’ and neglected women’s rights in many areas, women from different ethnicities allied in their struggle to take their rights back. Interviewee 16 elaborated on this:

“When we opened our institution, we also included free legal aid inside. More and more women started to call us about gender-based violence: these women were either victims of wartime violence or victims of domestic violence, or both. Then we made a legal research and we saw that there were no legal possibilities in the existing law at that time to help those women. Then we understood that the first step we needed to take was to change the laws. But in order to amend the laws, we noticed that there were no women to approach at the Parliament for us to change things through them. Together with *other women* [women from different ethnicities] in Bosnia-Herzegovina, we fought for electoral quota for women. That was the beginning of the time when women started to enter the Parliament and to be part of the post-war decision-making process.”<sup>61</sup>

This shows two things. First, it shows how important to have women in the parliament and in decision-making positions (political justice) in order to pass gender-friendly legislation and

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<sup>58</sup> Interviewee 17.

<sup>59</sup> See Patrizia Albanese, ‘Abortion and Reproductive Rights under Nationalist Regimes in Twentieth Century Europe’ (2004) 3 *Women’s Health and Urban Life: An International and Interdisciplinary Journal* 8.

<sup>60</sup> Interviewee 15.

<sup>61</sup> Interviewee 16 (emphasis added).

thus for the purpose of providing gender transformative justice. Second, as Interviewee 16 underlined, the struggle for women's rights in the post-conflict period have been a multi-ethnic process. Bringing quotas and legislation through the Law on Protection from Domestic Violence of 2005<sup>62</sup> has only been one of the many examples that women from all ethnicities come together and fight for. As Interviewee 5 remarked,

“We do not have nationalism between the ordinary people. During and after the war, ordinary people did not have any problem with national identities. Only the political parties and big actors use this. Now Bosnia is, in the world, recognised with nationalism which is not true. It is about political parties, not about us. For instance, I am a Catholic woman and I am working with a young Muslim woman as my assistant here.”<sup>63</sup>

Another interviewee's (a psycho-therapist from an NGO) words were on these lines as well:

“The major problem is the political and Constitutional system. There is no nationalism problem in Bosnia. *Nationalism has been institutionalised*. Only political parties use it. We work here as a mix group, mixed with Serbians, Croats and Bosniaks.”<sup>64</sup>

This made me question in which ways and with which means these political parties do create and reinforce ethnic divisions outside the premises of their parties. The answer which came repeatedly from my interviewees was education. Interviewee 16 commented that,

“In different parts of Bosnia-Herzegovina, we are learning different histories. We are now separated through our education system. Children in Herzegovina basically learn through the Croatian educational system, for example.”<sup>65</sup>

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<sup>62</sup> See Law on Protection from Domestic Violence of the Federation of Bosnia and Herzegovina (2005) <<https://www.legislationline.org/topics/country/40/topic/7/subtopic/25>> accessed 3 October 2018.

<sup>63</sup> Interviewee 5.

<sup>64</sup> Interviewee 6 (emphasis added).

<sup>65</sup> Interviewee 16.

In Bosnia and Herzegovina, the existence of ‘two schools under one roof’<sup>66</sup> enforces different curricula for students from different ethnicities. The lack of a Truth and Reconciliation Commission (TRC) results in reinforcement of different truths for different students through these schools. In transitional justice literature, details about how to implement education reforms in post-conflict societies are underexplored.<sup>67</sup> In fact, under the theory of conflict transformation, education is attached importance.<sup>68</sup> Although gender transformative justice aims to address the root causes of the conflicts and despite the role of education in the reinforcement of these root causes, education remains unexplored in the literature. My fieldwork proves the need for more interaction between conflict transformation and gender transformative justice on the issue of education. The exploration of the relationship between root causes of the wars and education systems makes it necessary for transformative justice scholars to explore this area further.

Gender transformative justice aims to create change in the society settings.<sup>69</sup> One of the crucial ways to do this is to identify the reasons why the society became involved in conflict in the first place. By doing this, the structures that led the society to the violence should be eliminated. Another crucial and relevant component of the theory of gender transformative justice is to approach the ‘justice’ concept from a critical perspective. In addition to criticising transitional justice for being legal-centric,<sup>70</sup> transformative justice scholars propose different pillars of justice. In the following section, I present my observations from my fieldwork to explore whether these principles suggested by transformative justice scholars echo in the field as well. I highlight the demands of survivors of wartime violence and of experts in the field. I tease out the connections between the expectations of the interviewees and the gender transformative justice theory.

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<sup>66</sup> See Safia Swimelar, ‘Education in Post-War Bosnia: The Nexus of Societal Security, Identity and Nationalism’ (2012) 12 *Ethnopolitics* 161; Alessandro Tolomelli, ‘Two Schools Under One Roof’ The Role of Education in the Reconciliation Process in Bosnia and Herzegovina’ (2015) 1 *Religion, Conflict and Education (Special Issue)* 89; A. D. Tveit, D. L. Cameron and V. B. Kovač, ‘Two Schools Under One Roof’ in Bosnia and Herzegovina: Exploring the Challenges of Group Identity and Deliberative Values among Bosniak and Croats Students’ (2014) 66 *International Journal of Educational Research* 103; Janine Natalya Clark, ‘Education in Bosnia-Herzegovina: The Case for Root-and-Branch Reform’ (2010) 9 *Journal of Human Rights* 344.

<sup>67</sup> Dženeta Karabegović, ‘Aiming for Transitional Justice? Diaspora Mobilisation for Youth and Education in Bosnia and Herzegovina’ (2018) 44 *Journal of Ethnic and Migration Studies* 1374, 1374.

<sup>68</sup> See John Paul Lederach, *Sustainable Reconciliation in Divided Societies* (US Institute of Peace Press 1997); John Paul Lederach, *The Moral Imagination: The Art and Soul of Building Peace* (OUP 2005); John Paul Lederach and Angela Jill Lederach, *When Blood and Bones Cry Out: Journeys through the Soundscape of Healing and Reconciliation* (OUP 2010).

<sup>69</sup> See Chapters 2 and 3.

<sup>70</sup> See Chapter 2.

#### 4. Different Pillars of Justice: Going beyond the Legal Pillar of Justice

For a transformative justice, it has been claimed that there is a need for “a radical rethinking of participation in transitional justice interventions”<sup>71</sup> since the question of ‘who is the victim?’ becomes blurred in the field. I concur with this opinion; however, the findings of the current thesis go beyond mere criticism of the concept of victimhood to a point where the ‘justice’ concept itself becomes disputable. In fact, a critical reading of the terms of both victimhood and justice feeds each other. In transitional justice practice, who is categorised and identified as victim tells us about ‘our’ understanding of justice. Here, I present three women’s interviews in order to make it clear how their problems are basically ‘missed’. As a result, they have not been identified and categorised as victims within the current transitional justice practice.

Interviewee 2 was the first person who propelled me to look at the concepts of ‘victimhood’ and ‘justice’ more critically. Under the practice of transitional justice at that time, Interviewee 2 has not been designated as a ‘victim’ of war. She told her war experience which challenges ‘the construction of victimhood’<sup>72</sup>:

“I was 13 years old at that time. One night, the military line fell and my father came home and he told my mother that ‘Chetniks are coming so we need to run away to the forest’. My mother started to cry, and she quickly brought a scissor from the other room and started to cut my hair, and then she put some black from a stone to my face. I remember that she was telling my father again and again ‘She will be raped, she will be raped’”.<sup>73</sup>

After the interviewee emphasised the trauma she went through because of the ‘fear of being raped’, she asked a very critical question: “*Who can actually approve a paper that someone is a victim of war or not?*”<sup>74</sup> This question is significant for two reasons. First, it challenges the perspective that pain and victimhood are measurable and visible. This illustrates how the concept of

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<sup>71</sup> Gready and Robins (n 4) 358.

<sup>72</sup> See Vincent Druliolle and Roddy Brett, ‘Introduction: Understanding the Construction of Victimhood and the Evolving Role of Victims in Transitional Justice and Peacebuilding’ in Vincent Druliolle and Roddy Brett (eds), *The Politics of Victimhood in Post-Conflict Societies: Comparative and Analytical Perspectives* (Palgrave 2018) pp 1-22.

<sup>73</sup> Interviewee 2.

<sup>74</sup> Interviewee 2 (emphasis added).

‘victimhood’ in transitional justice is limited and most of the time exclusive. Second, in a post-conflict society, who will decide who the victims are is also problematic for a very obvious reason: decision-makers might be traumatised. One NGO staff, who was a social worker, elaborated on this issue:

“I worked ... directly with sexual violence victims and perpetrators, victims of war trauma, domestic violence victims in the safe houses... Every day, I was directly involved in this topic through real life stories. Through this direct exposure to violence, I also became a victim of violence. Working for so long with trauma was not so good for my mental state. So, I had to change my job. I think all professionals who work in this field also need to change the job in time.”<sup>75</sup>

Then the following question becomes crucial: what if the decision-makers who approve a paper are victims of war themselves? Little is known about this issue. There is a need to understand how the conflicts mentally impact the decision-makers (judges, prosecutors, social workers, psychologists and so on) themselves. Such studies can challenge our understandings on the concepts of ‘victimhood’ and ‘justice’.

Similarly, after the conflict in Bosnia and Herzegovina, some human rights are considered more important and their violations are prioritised by the international community in funding policies. As discussed in Chapter 2, for instance, economic and social rights are of secondary importance in transitional justice processes. This creates problems for women. Women become the concern of transitional justice as long as their bodily integrity is violated, meaning most of the time when and if they are raped.<sup>76</sup> Another problem is that women’s economic and social rights remain outside the scope of transitional justice agenda. This makes their ‘victimhood’ and everyday concerns unrelated and unconnected to the war. Interviewee 5 acknowledged this point by giving an example from her own experience regarding what justice means for her:

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<sup>75</sup> Interviewee 14.

<sup>76</sup> Some scholars criticised such an approach for reproducing orientalist and colonial views on Bosnia and Herzegovina: See Helms (n 39); Jasmina Husanović, ‘The Politics of Gender, Witnessing, Postcoloniality and Trauma’ (2009) 10 *Feminist Theory* 99; Olivera Simić, ‘Challenging Bosnian Women’s Identity as Rape Victims, as Unending Victims: The ‘Other’ Sex in ‘Times of War’ (2012) 13 *Journal of International Women’s Studies* 129. See also Ratna Kapur, ‘The Tragedy of Victimization Rhetoric: Resurrecting the “Native” Subject in International/Post-Colonial Feminist Legal Politics’ (2002) 15 *Harvard Human Rights Journal* 1.

*“This is not peace. This is not justice. If you do not have a job, if you have lower salaries than men, if you are exposed to mobbing, this is not peace. I remember my life in ex-Yugoslavia. We had health insurance. We had scholarships. We felt much more free. Now, I do not feel free. When it is night, I am always at home because I feel safe at home. It was not like this before the war. Now the international community do not understand ordinary people.”*<sup>77</sup>

This was one of the interviews who challenged current understandings on ‘peace’ and ‘justice’. The other one came from Interviewee 23:

*“I was searching intensively for jobs and I have gone through maybe 50-60 job interviews at some point in my life. On every interview, I was asked, ‘Do you plan to be a mother soon?’ ‘How can you manage both career and motherhood if you become a mother?’ They never ask these questions to a man. It is not even rude in our society to ask those questions to women. If you work in the same position for several years, male members will have better opportunities just because they are males. I am deeply frustrated about our situation.”*<sup>78</sup>

Interviewee 23’s words become very explanatory in terms of providing a critical reading on transitional justice from a feminist perspective, which is discussed thoroughly in the following chapter.<sup>79</sup> Her words also illustrate that economic and social rights could have created a transformative impact for women. Then, my questions become: Who is transitional justice for? Who is justice for in post-conflict contexts? Who decides on the meaning and scope of ‘justice’ for women? What consequences are created by prioritising some rights and deprioritising others? What is the effect of this (de)prioritisation process for women?

Gender transformative justice arises from these critical questions. After carrying out her fieldwork, Wendy Lambourne notices the shortcomings of looking at the concept of justice through only one pillar and she develops a framework for transformative justice. According to Lambourne, transformative justice requires changes in the social, economic and political structures and relationships.<sup>80</sup> She underlines the necessity of “recognising and addressing

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<sup>77</sup> Interviewee 5 (emphasis added).

<sup>78</sup> Interviewee 23.

<sup>79</sup> See Chapter 8.

<sup>80</sup> Lambourne (n 7) 29.



the *multiple justice needs* and expectations of the local population”.<sup>81</sup> This approach overlaps with the concept of “complexity of harms”<sup>82</sup> or “web of gender-based harms”<sup>83</sup> within the feminist transitional justice literature. An analysis of transitional justice processes from a women’s rights perspective results in exploration of ‘multiple justice needs’. One of my interviewees expanded on this issue based upon her own experience with wartime sexual violence survivors:

“I worked with one of the youngest victims of rape. She was raped during the war. When I started working with her, she was really poor. There was no electricity, no water, no heating in her house. She was living with her husband; he was an alcoholic and always beating her.”<sup>84</sup>

There were other interviewees as well illustrating the complexity of the harms. When interviewees talk about their problems, these problems are not only related to only one specific human right violation. Different human rights violations emerge simultaneously; this requires simultaneous responses to these violations.

Following from such a perspective, Lambourne conceptualises a framework for transformative justice and brings forward different justice pillars: political justice, socioeconomic justice and psycho-social justice, in addition to legal justice.<sup>85</sup> Lambourne holds the view that such a multi-pillar justice approach can both create a feeling of justice in post-conflict societies and also minimise structural violence.<sup>86</sup> I concur with this for two reasons. First, such an understanding of justice is more capable of responding to ‘complexity of harms’ or ‘web of gender-based harms’. This is because this approach makes room for remedying both economic and social rights and also civil and political rights. Based upon my fieldwork findings, I can conclude that such an understanding overlaps with interviewees’ expectations. Second, as is discussed in the following chapter further, everyday violence and

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<sup>81</sup> *ibid* (emphasis added).

<sup>82</sup> See Fionnuala Ní Aoláin, ‘Advancing Feminist Positioning in the Field of Transitional Justice’ (2012) 6 *International Journal of Transitional Justice* 205.

<sup>83</sup> Catherine O’Rourke, *Gender Politics in Transitional Justice* (Routledge 2013) 237.

<sup>84</sup> Interviewee 2.

<sup>85</sup> Lambourne (n 7) 35; Wendy Lambourne, ‘Transformative Justice, Reconciliation and Peacebuilding’ in Susanne Buckley-Zistel *et al.* (eds), *Transitional Justice Theories* (OUP 2014) pp 19-39, 33.

<sup>86</sup> Wendy Lambourne, ‘Transformative Justice, Reconciliation and Peacebuilding’ in Susanne Buckley-Zistel *et al.* (eds), *Transitional Justice Theories* (OUP 2014) pp 19-39, 29.

structural violence is connected under a gender transformative justice approach.<sup>87</sup> For instance, the socioeconomic justice pillar of transformative justice can remedy the structural economic violence against women in the society, and by doing this it can eliminate everyday violence against women. Now I turn to bring my data forward in order to support the ideas of ‘multiple justice needs’, ‘complexity of harms’, and ‘web of gender-based harms’. By this, I aim to prove the necessity of gender transformative justice by illustrating how the violence is multifaceted.

Interviewee 1 commented that,

“Integration of all kinds of suffering should be considered together as a reason for the increase in the violence. They cannot be separated from each other. All the needs and all the interests should be linked. Women are raped during the war; they were imprisoned in different concentration camps but at the same time they went through domestic violence after the conflict. They also lost their houses, jobs, education and medical support. They had huge losses. These things had long-term consequences. They lost family members. All of this suffering should be viewed as one. We cannot separate all of these sufferings. All of them are equally important.”<sup>88</sup>

These ideas are in line with one of the main principles of international human rights law: the indivisibility and interdependence of human rights under the Vienna Declaration.<sup>89</sup> Transformative justice scholars, such as Gready and Robins,<sup>90</sup> interact international human rights law with international criminal law further by claiming the indivisibility and interdependence of human rights in order to create a theory of transformative justice. Integration of all human rights (not only civil and political rights) into the mechanisms of

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<sup>87</sup> See Chapter 8. See also Fionnuala Ní Aoláin, ‘Transformative Gender Justice?’ in Paul Gready and Simon Robins (eds), *From Transitional to Transformative Justice* (CUP 2019) pp 150-171.

<sup>88</sup> Interviewee 1.

<sup>89</sup> UN General Assembly, Vienna Declaration and Programme of Action, 12 July 1993, A/CONF.157/23 <<https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>> (hereinafter Vienna Declaration) accessed 3 October 2018, para 5.

<sup>90</sup> Paul Gready and Simon Robins, ‘From Transitional to Transformative Justice: A New Agenda for Practice’ (Centre for Applied Human Rights, University of York, Briefing Note TFJ-01 June 2014) <<http://www.simonrobins.com/Transformative%20Justice%20Briefing%20Paper.pdf>> accessed 3 October 2018, 1. See also Pamina Firchow and Roger Mac Ginty, ‘Indivisibility as a Way of Life: Transformation in Micro-Processes of Peace in Northern Uganda’ in Paul Gready and Simon Robins (eds), *From Transitional to Transformative Justice* (CUP 2019) pp 261-280.

transitional justice is what both transformative justice and international human rights law propose.<sup>91</sup> That is why engagement with the Vienna Declaration can provide new areas to explore for transformative justice scholars.

Interviewee 12 also underlined the connections between economic justice and political justice for women:

“When it comes to empowerment, we talk about economic empowerment, political empowerment etc. However, sometimes I get this feeling that we are separating these issues. We are not looking at them as a whole, but more as separate problems which they are not. Because you cannot have political empowerment without economic empowerment. You cannot have productive and successful institutional mechanisms for the prevention of gender-based violence if you do not have economic empowerment. It is all connected.”<sup>92</sup>

Most of the visited NGOs acknowledged the ‘multiple justice needs’ of their beneficiaries and support women by bringing different pillars of justice forward.<sup>93</sup> They seem to be aware of that “underlying socioeconomic injustices are *both a cause and effect* of physical, material and psychological harms”.<sup>94</sup> Most of the women’s NGOs interviewed comply with the requirements of the Council of Europe (CoE) Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention): in addition to providing safe houses, they also consider the other socioeconomic and psychological expectations and needs of their beneficiaries. For example, Interviewee 17 reported that,

“In the safe houses, we have psychologists in case women need any kind of help. Women in these houses can reside for a period of 6 months but there is a possibility of extension for additional 6 months. During this one year in total, we work with them in individual and group sessions. They do creative sewing in order to help their trauma of domestic violence. Meanwhile, we try to work on their economic situation after they leave the safe house. This means we try to

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<sup>91</sup> See for example Louise Arbour, ‘Economic and Social Justice for Societies in Transition’ (2007) 40 *International Law and Politics* 1.

<sup>92</sup> Interviewee 12.

<sup>93</sup> See Section 3 in this chapter for a critical analysis of the NGOs.

<sup>94</sup> Lambourne and Carreon (n 26) 73 (emphasis added).

find jobs for them. So, they would leave completely the violent society that they used to live in.”<sup>95</sup>

I asked another NGO head where these women tend to work after they leave the safe houses. Interviewee 10 answered that,

“We mediate for their employment. For example, we opened in April 2016 our first social entrepreneurship and we offer cleaning services. We are having two women employed full-time and three women employed part-time. The problem is that when we say that we are offering cleaning services done by domestic violence survivors, nobody hires them. The employers are suspicious; they do not want to have these problems ‘in their house’, you know. That is why women from safe house get jobs mostly to clean the coffee-bars; and in these coffee-bars they do cleaning at night or extremely early morning. It is very difficult if you have little kids. There is no law on this issue; and without law there is not much we can do.”<sup>96</sup>

Although I argue that such an ‘empowerment’ might, to a certain extent, challenge the patriarchal norms and gender stereotypes,<sup>97</sup> here I also need to emphasise that such initiatives are undertaken by women’s NGOs only. There is no a standard law and practice all over the country. Such projects are sporadic, and away from being sponsored and led by the state. Interviewee 26 demanded a victim-centred approach within such projects:

“All the health care system, education system and employment are affected by the war. Yes, we cannot deny that certain improvements have been done. But we still have internally displaced people; we still have missing persons. We still do not have a national project that focuses on the mental health of survivors.”<sup>98</sup>

Interviewee 26 recalls the “good victim-bad victim”<sup>99</sup> categories here again. Although women’s NGOs take a transformative approach by going beyond the legal pillar of justice,

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<sup>95</sup> Interviewee 17.

<sup>96</sup> Interviewee 10.

<sup>97</sup> See Chapter 8.

<sup>98</sup> Interviewee 26.

<sup>99</sup> Madlingozi (n 33) 111.

we are reminded by the direct victims of war that the question of ‘who is (transitional) justice for?’ should not be forgotten. It should be questioned in the current practice whether direct victims of war, for instance genocide survivors, can benefit from the help that the NGOs provide. When Srebrenica Mothers give a talk in one of the events of Medica Zenica during my internship, I observed that their primary demand was to see the perpetrators of their loved ones prosecuted before international or domestic courts. In the current practice of the NGOs, neglect of the legal pillar and prioritisation of other pillars of justice (socioeconomic, political, and psycho-social) is an obstacle to gender transformative justice.

Transformative justice has been criticised for its multidimensional justice approach by some scholars. Lars Waldorf, for instance, claims that transitional justice is and should stay as “short-term, legalistic and corrective”.<sup>100</sup> According to Waldorf, transitional justice mechanisms are not capable of tackling historically constructed socioeconomic inequalities because of the lack of funding.<sup>101</sup> Evelyne Schmid and Aoife Nolan counter Waldorf’s argument by asserting that remedying socioeconomic injustices can be a long-term project; however, the same is true for tackling civil and political rights as well. Schmid and Nolan challenge the myth that civil and political rights are able to be addressed with minimal funding in the short-term while economic and social rights cannot.<sup>102</sup> I concur with Schmid and Nolan and claim that civil and political rights violations might need a great amount of funding to be remedied as well. In addition to this point, Waldorf’s argument misses the point of the contextuality. In some post-conflict societies, social and economic rights can be the main impediments to peace and reconciliation.<sup>103</sup> In such contexts, the neglect of economic and social rights itself can hamper justice and peace.

A different criticism comes from Margaret Urban Walker. According to Walker, transformative justice “sets a very high bar not always attainable”.<sup>104</sup> She adds that directing the remedies to tackle structural violence in post-conflict societies “may bypass or

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<sup>100</sup> Lars Waldorf, ‘Anticipating the Past: Transitional Justice and Socio-Economic Wrongs’ (2012) 21 *Social and Legal Studies* 171, 179.

<sup>101</sup> *ibid* 179.

<sup>102</sup> See also Lisa J. Laplante, ‘Transitional Justice and Peacebuilding: Diagnosing and Addressing the Socioeconomic Roots of Violence through a Human Rights Framework’ (2008) 2 *International Journal of Transitional Justice* 331; Tafadzwa Pasipanodya, ‘A Deeper Justice: Economic and Social Justice as Transitional Justice in Nepal’ (2008) 2 *International Journal of Transitional Justice* 378; Ismael Muvingi, ‘Sitting on Powder Kegs: Socioeconomic Rights in Transitional Societies’ (2009) 3 *International Journal of Transitional Justice* 163.

<sup>103</sup> Lambourne (n 86) 29.

<sup>104</sup> Margaret Urban Walker, ‘Transformative Reparations? A Critical Look at a Current Trend in Thinking about Gender-Just Reparations’ (2016) 10 *International Journal of Transitional Justice* 108, 122.

instrumentalise harmed individuals and groups by treating them as symptoms of a more serious or important issue”.<sup>105</sup> Walker also highlights that when reconstruction or redistribution initiatives are not directed to victims (meaning “direct victims”), the justice mechanisms fail to send the message to the society that victims’ injuries matter enough.

In response to these criticisms, first, I would like to emphasise that my fieldwork in Bosnia and Herzegovina showed that survivors of genocide and other wartime violence have no abstract categories for human rights like we have as law scholars. Harms are multifaceted, and violations of economic and social rights often take place simultaneously with civil and political rights violations. Abstract categories of human rights lose meaning in the field. As I have illustrated above, economic and social rights and civil and political rights violations are integrated and interconnected in the interviews and *in real lives*. While the genocide survivor interviewee mentions impunity of perpetrators as a major problem, she underlines the lack of mental health support for survivors of genocide.<sup>106</sup> She brings forward the lack of any effective legal mechanisms to deal with domestic violence, but also, she raises her concerns about how the lack of employment, housing, and education aggravates the problem of domestic violence for the genocide survivors.<sup>107</sup> Thus, one of the findings of my fieldwork has been that the division between human rights and (de)prioritisation of certain category of human rights need to be challenged. The indivisibility and interdependence of human rights principle of international human right law<sup>108</sup> needs to be more integrated into transitional justice literature.

During the fieldwork it was striking to observe that many types of human rights violations and war-related harms are still ongoing. As discussed above, the concepts of ‘victimhood’, ‘violence’, and ‘justice’ become blurred in the field. I concur with Walker regarding the requirement of prioritisation of ‘direct victims’. However, my fieldwork has challenged this concept as a whole. As I put quotations from different interviewees above, I heard many stories which challenge the current understandings of victimhood: Interviewee 2<sup>109</sup> talked about her trauma occurring as a result of ‘the fear of being raped’ when armed groups were invading their village. Interviewee 14<sup>110</sup> reported the trauma that she suffered as a social

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<sup>105</sup> *ibid* 123.

<sup>106</sup> Interviewee 1.

<sup>107</sup> Interviewee 1.

<sup>108</sup> Vienna Declaration (n 89) para 5.

<sup>109</sup> Interviewee 2.

<sup>110</sup> Interviewee 14.

worker after listening to wartime violence experiences of women on a daily basis. Interviewee 5 commented that the current situation was not just or peaceful for her. According to her, this was not a peace situation since she was too afraid of being outside when it is dark.<sup>111</sup> Although these interviews do not denigrate, challenge or compete with the pain of ‘direct victims’, they lead to the necessity of further and thorough studies on the meaning of ‘victimhood’ from the perspective of gender transformative justice.

Finally, for women, in the peacebuilding processes long-term solutions are needed. The interviews I conducted illustrate the connection between structural violence and everyday violence against women. In addition, the literature demonstrates that victims of wartime sexual violence, for example, are invariably among the most marginalised of those affected by the conflict.<sup>112</sup> Similarly, the same violence against men and women during the conflicts might result in different and aggravated impacts for women as result of pre-existing inequalities, including socioeconomic difficulties.<sup>113</sup> Women are often rejected by their families and communities in case of pregnancies out of wartime sexual violence and “excluded from social and cultural life due to the stigma and shame attached”.<sup>114</sup> Therefore, in order to meet the needs and expectations of women and to provide gender transformative justice in post-conflict societies, “short-term, legalistic and corrective”<sup>115</sup> practice of transitional justice needs to be abandoned. Transitional justice processes need to be gender transformative, suggesting long-term solutions and going beyond the only legal pillar of justice.

## 5. Conclusion

The interviewees highlighted how the transitional justice process in Bosnia and Herzegovina falls short of offering context-relevant solutions. The international community has been criticised for applying ‘one size fits all’ solutions to the society concerned. Another crucial point which both the transformative justice literature and the interviewees severely criticised

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<sup>111</sup> Interviewee 5.

<sup>112</sup> Ní Aoláin, O’Rourke and Swaine (n 16) 99.

<sup>113</sup> See literature regarding intersectionality here: Eilish Rooney, ‘Intersectionality – A Resource for Societies in Transition’ (September 2010) Transitional Justice Institute Research Paper No.10-16 <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1685333](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1685333)> accessed 3 October 2018 and see also Fionnuala Ní Aoláin and Eilish Rooney, ‘Underenforcement and Intersectionality: Gendered Aspects of Transition for Women’ (2007) 1 *International Journal of Transitional Justice* 338.

<sup>114</sup> Lambourne and Carreon (n 26) 74.

<sup>115</sup> Waldorf (n 100) 179.

was the justice system which has left the root causes of the violence against women and structural violence unaddressed. On this point, the interviewees pointed out that the unaddressed causes of the violence against women (reportedly, ethno-nationalism and patriarchy) prevent the transitional justice mechanisms from working and becoming established in the society. Finally, the interviews echoed the need to add different pillars to the framework of 'transitional justice'. As maintained throughout the transformative justice literature, different layers are needed in order to provide justice in post-conflict societies, such as psycho-social, political and socioeconomic justice. This point has been repeatedly remarked on in the field. The interviewees, based on their work or on their own personal experiences, highlighted the urgent need for a comprehensive approach to the term 'justice'. An 'only legal' approach to transitional justice has been disapproved of repeatedly.

Conducting the fieldwork has enabled me to observe the problems which the current practice of transitional justice fails to address. Ignorance of a gender lens throughout the regulation of the legal mechanisms of transitional justice (trials, reparations, truth mechanisms, institutional reforms) has been repeatedly raised during the interviews. Although the criticisms have matched the existing criticisms of transitional justice, at some points the data has gone beyond the existing literature. In addition to more carefully comprehending the problems of transitional justice by being in the field, the interviews confirmed, concretised and reinforced the need for gender transformative justice. The fieldwork has strengthened my position in the debate on 'transitional justice *vs* transformative justice'. This has happened through two different lines: first by observing the gender-related problems which transitional justice creates, and second by linking the demands of the interviewees with the discourse and suggestions of gender transformative justice model. The connections between the data and the framework of gender transformative justice has been revealed during the analysis of the fieldwork data.

The next chapter continues analysing the fieldwork data by focusing on the *continuum of violence* principle of gender transformative justice. Having analysed the ways in which violence continues in varied forms and to different extents today in Bosnia and Herzegovina, the chapter gives insights into the meanings of terms of 'justice' and 'peace' *for women*. The meaning and scope of 'transformation' is also scrutinised by engaging with Bosnian women's own understandings regarding the meaning of 'transformation'.



## CHAPTER 8: FIELDWORK FINDINGS 2 – SCRUTINISING THE MEANING OF ‘GENDER TRANSFORMATIVE’ IN THE CONTEXT OF BOSNIA AND HERZEGOVINA

“We started to ask ourselves and society:  
What is the women’s way of peace?”<sup>1</sup>

“Patriarchy is not only within the political parties;  
patriarchy is in every organisation, and *it is in our homes*.  
That is why it is very hard to fight it.”<sup>2</sup>

### 1. Introduction

Feminist scholars have made a distinct contribution which has developed the theory of transformative justice. A critical analysis of transitional justice mechanisms from a feminist point of view illustrates that these mechanisms fall short of addressing the structural violence and the root causes of the violence.<sup>3</sup> As emphasised in the previous chapter, engaging with the field provides an insight into the close links between everyday violence and structural violence against women. In addition, public and private divisions are challenged by looking at the violence in a continuum. This is reflected in the theories of both transformative justice and conflict transformation: both critically approach the term ‘peace’, similar to the feminist literature.<sup>4</sup> They emphasise a need to go beyond the legal pillar of justice and they argue for the integration of all human rights (the indivisibility and interdependence of human rights) into the transitional justice mechanisms.<sup>5</sup>

The previous chapter examined the three principles of gender transformative justice, namely contextuality, addressing the root causes of violence and going beyond the legal pillar of justice. In this chapter I examine the last principle of gender transformative justice: continuum of violence. This principle gives insight into the expectations of women from the ongoing peace-building process in Bosnia and Herzegovina. Although there is a growing

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<sup>1</sup> Interviewee 5.

<sup>2</sup> Interviewee 22 (emphasis added).

<sup>3</sup> See Chapters 2, 3 and 7.

<sup>4</sup> See Chapters 2 and 3.

<sup>5</sup> See Chapter 7.

literature regarding the meanings of peace and justice, too little attention has been paid to what peace and justice currently mean for Bosnian women. In this chapter, I therefore ask the following questions: What are the meanings of peace and justice for women? In order to provide gender transformative justice, what needs to be achieved in Bosnia and Herzegovina today? How does the violence against women continue after the conflict ‘ended’? What does gender transformative justice need to achieve in order to prevent violence against women from continuing?

In order to address these questions, in section 2, I look at the concept of ‘continuum of violence’. I scrutinise the ways in which violence against women continues after the conflict ‘ended’. I present the main reasons for the continuum of violence in Bosnia and Herzegovina. During the fieldwork, I asked the interviewees the following questions, among others: ‘Even though Bosnia and Herzegovina is categorised by the international community as a ‘successful’ case, why do you think there are still existing problems regarding women’s rights? What are the underlying reasons which block the legal rights on paper from being achieved in women’s real lives?’ This was my principal ‘gender transformative justice question’. By asking this, instead of assuming that ‘structural violence exists in these and those ways’, my intention was to ask women in the field whether and in which ways structural violence continues.

In Section 3, I give insight into the meaning of ‘gender transformative’ by engaging with Bosnian women’s personal opinions and experiences. Although there are many projects and peacebuilding initiatives undertaken by the NGOs and various government institutions in Bosnia and Herzegovina, it becomes a challenge to determine the extent to which these projects are gender transformative and thus confront the gender stereotypes and patriarchal norms in the society under consideration. I engage with the relevant literature in order to deepen the discussion. However, my interviewees become the decision-makers who have the last word on the ‘success’ of these projects.

## **2. Understanding the Violence against Women in a Continuum**

In the peace-building and transitional justice processes, everyday violence most of the time escapes attention.<sup>6</sup> It is carried to the criminal, domestic or social spheres from the political

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<sup>6</sup> Paul Gready *et al.*, ‘Transformative Justice: A Concept Note’ (October 2010) <[http://www.wun.ac.uk/files/transformative\\_justice\\_-\\_concept\\_note\\_web\\_version.pdf](http://www.wun.ac.uk/files/transformative_justice_-_concept_note_web_version.pdf)> accessed 3

sphere.<sup>7</sup> Such a ‘normalisation’ of violence results in the absence of any mechanisms to deal with violence against women in post-conflict situations. Criticisms of transitional justice, which is the point where gender transformative justice is raised and on which it is based, necessitate looking at the violence in a continuum. So far, the principle of continuum of violence has mostly only been applied to ‘during and post-conflict’. However, in my fieldwork I scrutinised women’s rights and situations ‘before the war’ as well. My aim in doing this was to present the connections between pre- and post-conflict violence. This enabled me to discuss the ‘success’ of the transitional justice process in terms of women’s rights. I had an opportunity to answer these questions by looking at the pre-war period as well: Has the transitional justice process provided women with rights which they had not had before the conflict? Has the transition period improved the situation for women and been a process by which women have acquired more rights than they had before the war? Finding answers to these questions enables me to observe whether the state of Bosnia and Herzegovina, in the transitional justice process, has played a role in ameliorating or in challenging gendered violence, or perpetuating and (re-)creating violence.<sup>8</sup>

In the literature on ‘women and peace’, it has been widely claimed that violence against women after conflicts invariably increases in every post-conflict situation.<sup>9</sup> Although this is also confirmed by the UN reports,<sup>10</sup> it needs to be highlighted here that the end of an armed conflict might create a space where violence can be reported more easily, regardless of the increase in violence.<sup>11</sup> As Fionnuala Ní Aoláin, Catherine O’Rourke and Aisling Swaine argued that,

“There is emerging data in some post-conflict zones suggesting that a rise in intimate violence follows for women after ‘peace’ is theoretically won. This data

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October 2018, 2. See also Fionnuala Ní Aoláin, ‘Transformative Gender Justice?’ in Paul Gready and Simon Robins (eds), *From Transitional to Transformative Justice* (CUP 2019) pp 150-171.

<sup>7</sup> *ibid.*

<sup>8</sup> Jelke Boesten and Polly Wilding, ‘Transformative Gender Justice: Setting an Agenda’ (2015) 51 *Women’s Studies International Forum* 75, 76.

<sup>9</sup> Rashida Manjoo and Calleigh McRaith, ‘Gender-based Violence and Justice in Conflict and Post-Conflict Areas’ (2011) 44 *Cornell International Law Journal* 11, 12.

<sup>10</sup> United Nations, Economic and Social Council, Commission on Human Rights, Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, UN Doc E/CN.4/2001/73 (23 January 2001) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G01/104/44/PDF/G0110444.pdf?OpenElement>> accessed 3 October 2018, 18.

<sup>11</sup> Christine Bell and Johanna Keenan, ‘Human Rights Nongovernmental Organizations and the Problems of Transition’ (2004) 26 *Human Rights Quarterly* 330, 340.

is not sufficiently consistent and validated to prove a general pattern and could instead reflect *increased reporting* of the issue. It is possible that effective rule of law reform and institutional reform and institutional strengthening of the police and courts may, for example, encourage some women to report intimate violence in post-conflict settings.”<sup>12</sup>

Indeed, the fieldwork presents a more complicated view in contrast to the general assumptions about pre-conflict situations. Interviewee 9 emphasised on the basis of her own experience that,

“Patriarchal norms were present in the society for many years before the war. I would say from my own experience of my family and my friends’ families that violence was always there, but it was always kept within the crime scene. It was unacceptable to society for this to be spoken. Again, it was women who were segregated, and they were the ones blamed for what happened to them. I can see that this pattern is valid for different generations for women who lived in 60s, 70s, 80s, 90s and onwards.”<sup>13</sup>

Other than personal experiences regarding the violence before the war, it is difficult to find any (unbiased) sources in relation to violence against women during the socialist period in the Balkans. However, the interviews provided more valid information about that since the interviewees referred to their own personal experiences on this issue, as Interviewee 7 did with this comment:

“We do not have any research regarding pre-conflict violence against women. But according to what I have learned in my counselling office, this was also a huge problem even before the war, especially in rural areas. Some of my current clients are older women and they say that the violence started from the beginning of their marriages, far earlier than the war.”<sup>14</sup>

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<sup>12</sup> Fionnuala Ní Aoláin, Catherine O’Rourke and Aisling Swaine, ‘Transformative Reparations for Conflict-Related Sexual Violence: Principles and Practice’ (2015) 28 *Harvard Human Rights Journal* 97, 123 (emphasis added).

<sup>13</sup> Interviewee 9.

<sup>14</sup> Interviewee 7.

On similar lines, Interviewee 6 stressed that,

“Many foreign donors have told us that the war created domestic violence in Bosnia and Herzegovina, but *this was not true*. We had women who had been victims of domestic violence for many years. Fathers, brothers and later husbands were violent to them, but it was a taboo to talk about it.”<sup>15</sup>

Thus, the fieldwork findings echo the argument of Ní Aoláin, O’Rourke and Swaine. The argument of an ‘increase in the violence in post-conflict countries’ might have precluded the violations which occurred before the conflicts from being visible. However, there is a point missing in the perspective of Ní Aoláin, O’Rourke and Swaine: although reporting might have increased in post-conflict settings, this does not mean that there was no reporting of gender-based violence before the conflict. Interviewee 13 helped me to be aware of this issue by saying that:

“Nobody can provide you with data in relation to gender-based violence before the conflict. First, it is because the data is not complete. As you know, laws are different from before the conflict in the 1990s. For example, rape within a marriage was not criminalised then. Or, male homosexuality was criminalised. So basically, many things were not criminalised. Second, some things also went unnoticed and unreported. The main problem is the *categorisation of the data*. Many people in the courts put those cases in the category of ‘other crimes’, not in the category of rape or domestic violence and so on because there were no laws regarding gender equality before the war but there were laws on assault and torture. So, some of the cases might have been reported under these crimes.”<sup>16</sup>

This adds another layer to the complexity of the pre-conflict situations which the existing literature has not explored.

The second pillar of the continuum of violence is the connections between wartime violence and post-conflict violence. This issue arises from the problematic approach which considers the end of an armed conflict as the end of the violence against women and disregards the

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<sup>15</sup> Interviewee 6 (emphasis added).

<sup>16</sup> Interviewee 13.

ongoing violations of human rights which have connections with the wartime violence. The binary language of ‘conflict’ and ‘post-conflict’ “obscures the continuum of violence from ordinary times to times of conflict, and into post-conflict settings”.<sup>17</sup> Here, two significant questions arise: how is the violence against women in the post-conflict period legitimised?<sup>18</sup> And how can the violence against women in post-conflict situations become invisible and what are the mechanisms which confer a ‘legitimacy’ on this invisibility? I now turn to look at the ‘post-conflict’ violence against women.

After the conflict ‘ended’, the problems which have not been addressed and framed in the scope of transitional justice allow the violence to continue in different ways. Interviewee 2 elaborated this point with examples:

“The court processes, no matter whether domestic or international, are not supportive. The judges and the prosecutors are not educated or trained regarding how to approach these women [wartime sexual violence survivors]. In one case, there was one woman who was a victim of wartime rape and all her family members were killed in front of her eyes and her house was set on fire by her neighbour. When she went to the court in order to give testimony, she was put into the same room as the perpetrator. In another case, one woman’s identity was disclosed and her all information was in the newspapers on the next day. So much trauma was created in the court proceedings.”<sup>19</sup>

Many examples like this were repeatedly told me by different interviewees. This illustrates that the legal mechanisms which are not designed with a gender-friendly approach might actually do more harm than good to the survivors. This confirms and strengthens my standpoint in the discussion on *transitional justice vs transformative justice*, because such challenges in the court proceedings might dissuade women from seeking access to justice in the first place. The transitional justice mechanisms which are designed under patriarchal norms and ‘gender-neutral’ principles become exclusive even in providing access to the justice mechanisms, let alone providing a judgment which is gender transformative.

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<sup>17</sup> Ní Aoláin, O’Rourke and Swaine (n 12) 105.

<sup>18</sup> Cilja Harders, ‘Gender Relations, Violence and Conflict Transformation’ in Beatrix Austin, Martina Fischer and Hans J. Giessmann (eds), *Advancing Conflict Transformation: The Bergbof Handbook II* (Barbara Budrich Publishers 2011) pp 131-155, 136.

<sup>19</sup> Interviewee 2.

The other point raised in the interviews was domestic violence: this was repeatedly stressed by the interviewees in order to illustrate how the violence had not ended after the conflict but had changed its form. The literature runs parallel with this. Many scholars have connected the alleged ‘increase’ in violence against women to war trauma, breakdown of interpersonal and societal relationships, elevated alcohol and drug use, and the lack of a physical and social infrastructure for responding to community needs.<sup>20</sup> Domestic violence has been suggested as something which must be addressed as a part of peacebuilding, reparations, justice systems, security regimes and social services.<sup>21</sup> Bosnia and Herzegovina might seem to achieve all of this by integrating policies on violence against women into the ongoing transitional justice process. Bosnia and Herzegovina has a Law on Protection from Domestic Violence,<sup>22</sup> and it has signed and ratified many international conventions from CEDAW to the Council of Europe (CoE) Convention on Preventing and Combating Violence against Women and Domestic Violence (known as the Istanbul Convention). However, as has been emphasised repeatedly throughout this thesis, the aim of this study is to go beyond the legal framework and to analyse how social structures are influential in the implementation of the legal regulations. I aim to explore the ‘gender gaps’<sup>23</sup> and the underlying reasons for them in order to find out what is needed for gender transformative justice. I question the reasons which create disparity between the legal regulations and the practice. I now turn to scrutinising the ways in which violence against women (mainly domestic violence) still goes unreported and unpunished in Bosnia and Herzegovina. I examine closely the structural violence and the ways in which it plays a role in the society which preclude the implementation of the laws.

In accessing the transitional justice mechanisms, particular challenges appear as a result of patriarchal structures and ongoing discrimination in the political, economic, social, and legal spheres.<sup>24</sup> Patriarchal structures within a society impede “the pursuit of peace with justice”.<sup>25</sup> Both transformative justice and conflict transformation theories aim to address the structural

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<sup>20</sup> See Jan Jindy Pettman, *Worlding Women: A Feminist International Politics* (Routledge 1996) Part 2; Tristan Anne Borer, ‘Gendered War and Gendered Peace: Truth Commissions and Postconflict Gender Violence: Lessons from South Africa’ (2009) 15 *Violence Against Women* 1169.

<sup>21</sup> Gready *et al.* (n 6) 10.

<sup>22</sup> See Law on Protection from Domestic Violence of the Federation of Bosnia and Herzegovina (2005) <<https://www.legislationline.org/topics/country/40/topic/7/subtopic/25>> accessed 3 October 2018.

<sup>23</sup> Fionnuala Ní Aoláin, ‘Gendered Under-Enforcement in the Transitional Justice Context’ (University of Minnesota Law School, Legal Studies Research Paper Series (2009), Research Paper No: 09-33) 19.

<sup>24</sup> Wendy Lambourne and Vivianna Rodriguez Carreon, ‘Engendering Transitional Justice: A Transformative Approach to Building Peace and Attaining Human Rights for Women’ (2016) 17 *Human Rights Review* 71, 71.

<sup>25</sup> *ibid* 71- 72.

reasons for the ongoing violence. In the Bosnian case, patriarchy was raised by the interviewees as the main obstacle to gender transformative justice. According to Interviewee 8,

“Justice is particularly hard for women to get. The main challenge is patriarchy. It comes from family, culture and from the State. State institutions are also patriarchal and there is violence from the State institutions too. Despite the fact that we have a pretty good legislation, that legislation is not applied; it is hard to get your rights once they are violated. In the family, women are expected to take care of their families and their children and to suffer for the sake of their families. If they go public with the problem, women know that they are the ones who will be judged.”<sup>26</sup>

Similarly, Interviewee 15 commented that,

“Patriarchy is so well-rooted and structured here in Bosnia and Herzegovina. Even as a feminist, for me it is so hard to deconstruct things because you are living and have been raised in that system; you are taught through that patriarchal system. So, it is very well-rooted. This is the way your family is organised; this is the way you have to talk to anyone at work. It is hard to get out of that system and find some structural solutions.”<sup>27</sup>

Feminist scholars have critically evaluated the transitional justice mechanisms and observed that as a result of the patriarchal structures and gender stereotypes rooted in the society, it is hard to find solutions challenging these rooted norms.<sup>28</sup> In the fieldwork, the interviewees brought forward such situations where their projects have often been challenged by the patriarchal norms in the society. Interviewee 16 elaborated on this point based on her own experience:

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<sup>26</sup> Interviewee 8.

<sup>27</sup> Interviewee 15.

<sup>28</sup> For this literature, see Ruth Rubio-Marin (ed.), *What Happened to Women? Gender and Reparations for Human Rights Violations* (Social Science Research Council 2006); Ruth Rubio-Marin (ed.), *The Gender of Reparations: Unsettling Hierarchies While Redressing Human Rights Violations* (CUP 2009); Fionnuala Ní Aoláin, Dina Francesca Haynes, and Naomi Cahn, *On the Frontlines: Gender, War, and the Post-Conflict Process* (OUP 2011); Catherine O'Rourke, *Gender Politics in Transitional Justice* (Routledge 2013). See also Ní Aoláin (n 6).



“In a project right after the war, we were giving cattle to the families in the villages. We challenged the norms of the society and encouraged women to come and sign papers to get the cattle. The majority of the male members of the families protested that if women signed the paper it would show that they were the owners of the cows. The men were expecting that they would be the owners of the cows because a cow is a property and normally properties belong to men in our society. We had so many criticisms and comments. One of these comments was striking. One of the husbands of these women to whom we were giving cows said: *“I do not worry: because it is my woman, so it is my cow”*.”<sup>29</sup>

Interviewee 15 also gave an example from her own experience in order to illustrate how difficult it is to meet the expectations and needs of women within the patriarchal societies in transitional justice periods:

“We had a project to support agriculture. We invited people who wanted to start agricultural enterprises after the war to apply for the funding. At one point, we realised that no women were applying for the funding. I asked why. Then I realised that the conditions required that for applicants to submit an application, they had to be the owners of the land. So, of course, later we changed the conditions. We said that they only needed to submit proof that they are living in the household.”

These examples from the field explain how difficult it is to provide gender transformative justice within patriarchal society settings. Although the main barrier referred to by the interviewees was patriarchal norms, war and its impacts should be considered as significant factors which aggravate and intensify the patriarchy. Being a post-conflict country brings further challenges to anyone trying to challenge the patriarchal norms. Interviewee 4 clarified this point with a personal experience:

“After the war, there was PTSD in the ex-soldiers. In my company, there were so many men with this syndrome. They all came back from the war with this syndrome. They have wives and children and there is violence in their homes. I have connections with ... [a women’s NGO] and I know that some of the men

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<sup>29</sup> Interviewee 16 (emphasis added).

in my company have divorced some of the women in this NGO. This violence is related to the war because there is no other explanation. They are dangerous, and they take only painkillers because there is no medical support for these ex-soldiers. So, when they go to the hospital, they are given only painkillers and then sent home. Health institutions do not treat their PTSD. They are not even diagnosed with PTSD. But when they get divorced and they need to pay money to their ex-wives [alimony], then they go to the court and they get these official reports saying that they have PTSD in order not to have to pay the money [alimony].”<sup>30</sup>

This example is striking in terms of explaining the move of violence against women from the political sphere to the domestic sphere. However, there is another aspect of this example which needs to be highlighted here. As Elissa Helms has stressed, when the perpetrators were ethnically ‘other’ men (in wartime sexual violence), it was more acceptable to address “the gendered workings of power”.<sup>31</sup> After the end of the war, although the violence continued and women were still victims, now the perpetrators were local men, meaning that they were heroes of the war and defenders of the nation.<sup>32</sup> The example which Interviewee 4 gave above concretises this issue. Although ex-soldiers are not treated or even diagnosed with PTSD but are sent back home with only painkillers, in cases of divorce, the health institutions have no hesitation in providing the ex-soldiers/perpetrators with a document showing that they have PTSD in order for them to pay less alimony. This point has also become a problem for women’s rights NGOs. Although many NGOs have been supported by the State and government institutions in their struggle and activism against wartime violence towards women, when these institutions move into combating domestic violence, it makes it harder for them to criticise those in power and the perpetrators/yesterday’s heroes.<sup>33</sup>

All in all, in Bosnia and Herzegovina, violence against women continues in varied forms and to different extents today. For the continuums in the violence to be terminated, under the theory of gender transformative justice, root causes of the violence and structural violence

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<sup>30</sup> Interviewee 4.

<sup>31</sup> Elissa Helms, *Innocence and Victimhood: Gender, Nation, and Women’s Activism in Postwar Bosnia-Herzegovina* (University of Wisconsin Press 2013) 155.

<sup>32</sup> *ibid* 186.

<sup>33</sup> *ibid*.

against women need to be addressed in the transition period.<sup>34</sup> Traditional patriarchal norms and gender inequalities are the main causes of the violence against women both during and after the conflict. According to the interviewees, these norms and inequalities remain intact. The links between pre-, during, and post-conflict violence against women are ignored with the neglect of the root causes of the violence: this results in the decontextualization and dehistoricisation of the current violence against women.

### **3. The Meaning of ‘Gender Transformative’ on the Ground: Looking at the Local Understandings of the Term**

There are a great number of ongoing projects undertaken by governmental, regional bodies, and by the women’s rights NGOs in Bosnia and Herzegovina. My research looked at the extent to which these projects or peacebuilding initiatives provide ‘gender transformative justice’. This section is to investigate the extent to which these projects are transformative, i.e. confront the gender stereotypes and patriarchal norms, and support gender equality. Although I engage with the relevant literature in this field, my interviewees are the main decision-makers regarding the ‘success’ of these projects. In addition to presenting their opinions on these projects, I bring forward the projects and initiatives that my interviewees consider as ‘transformative’ for women. After the section puts forward an analysis on these ‘gender transformative’ projects, the findings suggest that interviewees pay attention to ‘who’ are involved in the projects. From the initial phases of the projects (bringing the idea forward) to carrying out the goals, the main decision-makers are grassroots movements in the ‘transformative’ projects. This strengthens the point of the thesis: conflict transformation needs to be integrated into the transformative justice theory since under conflict transformation theory grassroots are placed a great emphasis.

Ruth Rubio-Marin argues in *What Happened to Women? Gender and Reparations for Human Rights Violations* that transitional justice mechanisms (specifically reparations) need to “steer away from reproducing gender subordination and ... advance towards a more egalitarian society in terms of opportunities given to both sexes”.<sup>35</sup> In another book, Rubio-Marin underlines that in order to be transformative, pre-existing structural gender inequalities need to be

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<sup>34</sup> See Chapters 2 and 3.

<sup>35</sup> Ruth Rubio-Marin, ‘Introduction’ in Ruth Rubio-Marin (ed.), *What Happened to Women? Gender and Reparations for Human Rights Violations* (Social Science Research Council 2006) pp 20-47, 32.

subverted, instead of being reinforced.<sup>36</sup> Similar to Rubio-Marin, many other scholars support the idea of ‘transformative reparations’ which refrain from reproducing the pre-existing gender inequality.<sup>37</sup> The intervention that feminism has made to transitional justice has contributed a great deal to the development of the theory of transformative justice. Although ‘transformative reparations’ have received much of the attention, the main idea is that transitional justice processes should abstain from reinforcing patriarchal norms and gender stereotypes. Therefore, the ongoing projects and peacebuilding initiatives in Bosnia and Herzegovina should be evaluated on the basis of these criteria.

Returning to the ‘status quo ante’ means “returning women to their unequal status”.<sup>38</sup> Similarly, Rubio-Marin also objects to the “idealization of the status quo ante”.<sup>39</sup> However, in my opinion, such approaches fail to fully define what the previously existing state looks like, and worse, create a general assumption that ‘all pre-conflict states failed to provide gender equality’. Such a general assumption needs to be tailored according to the specific country experiences at stake. In my case study, as discussed in Chapter 7, the pre-conflict state, the former Yugoslavia, is not described by the interviewees with a unique opinion. Even several interviewees expressed that the laws and different legal regulations were more strictly enforced then, unlike now. Here I consider the post-conflict reconstruction process as a “window of opportunity”<sup>40</sup> both to keep the transitional justice process from being patriarchal itself and to prevent the recurrence of pre-existing gendered hierarchies, *if any*.

In Bosnia and Herzegovina, the ongoing peacebuilding initiatives and women’s rights-related projects are mostly carried out by the NGOs and governmental and regional bodies. However, it is difficult to draw a line between the NGO sector and state institutions. In many projects, there is an ongoing and increasing collaboration and coordination between

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<sup>36</sup> Ruth Rubio-Marin, ‘Introduction: A Gender and Reparations Taxonomy’ in Ruth Rubio-Marin (ed.), *The Gender of Reparations: Unsettling Hierarchies While Redressing Human Rights Violations* (CUP 2009) pp 1-17, 6.

<sup>37</sup> See Ní Aoláin, O’Rourke and Swaine (n 12); Ruth Rubio-Marin and Pablo de Greiff, ‘Women and Reparations’ (2007) 1 *International Journal of Transitional Justice* 318; Andrea Durbach, Louise Chappell and Sarah Williams, ‘Foreword: Special Issue on “Transformative Reparations for Sexual Violence Post-Conflict: Prospects and Problems”’ (2017) 21 *International Journal of Human Rights* 1185. See also (n 28).

<sup>38</sup> Ní Aoláin, O’Rourke and Swaine (n 12) 103.

<sup>39</sup> Rubio-Marin (n 35) 30.

<sup>40</sup> Nahla Valji, ‘A Window of Opportunity: Making Transitional Justice Work for Women’ (UN Women, 2<sup>nd</sup> edition, October 2012) <<http://www.unwomen.org/~media/Headquarters/Attachments/Sections/Library/Publications/2012/10/06B-Making-Transitional-Justice-Work-for-Women.pdf>> accessed 3 October 2018; Julie Arostegui, Gender, Conflict, and Peacebuilding: How Conflict Can Catalyse Positive Change for Women’ (2013) 12 *Gender and Development* 533; Judith El-Bushra, ‘Feminism, Gender, and Women’s Peace Activism’ (2007) 38 *Gender and Change* 131.

the NGOs and the state institutions. Although state and NGO collaboration is criticised by some scholars since this would make the NGOs ‘open to cooption by states’,<sup>41</sup> the reasons for this cooperation lie in the short-term transitional justice processes. Interviewee 5 commented on this issue:

“If you need one hundred years to become a patriarchal society, then you need more than 30 years to change something rooted in the society. Two-three year-long projects are very short-term projects, like UN Women did here. How can we change patriarchal upbringing in such a short time?”<sup>42</sup>

Similarly, Interviewee 6 noted:

“After international sponsors left, we discovered that we cannot do it alone. We needed networks. We needed to cooperate with the regional bodies and state institutions.”<sup>43</sup>

Although there is an increasing cooperation, the findings from the fieldwork suggest that this cannot be called a total co-option. Both the NGO that I was intern with and other women’s rights NGOs actively push the state to adopt stronger laws regarding gender equality.<sup>44</sup> Elissa Helms also underlines this issue and found in her fieldwork that women’s NGOs

“contributed to the passage of stronger laws against domestic violence and marital rape, a state level gender equality law, and to efforts in many municipalities throughout [Bosnia and Herzegovina] to respond in a more supportive way to women victims of violence.”<sup>45</sup>

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<sup>41</sup> Oliver P. Richmond, *Maintaining Order, Making Peace* (Palgrave 2002) pp 140-180, 149.

<sup>42</sup> Interviewee 5.

<sup>43</sup> Interviewee 6.

<sup>44</sup> See Medica Zenica report: Medica Zenica and Medica Mondiale, ‘We Are Still Alive: Research on the Long-Term Consequences of War Rape and Coping Strategies of Survivors in Bosnia and Herzegovina’ (June 2014) <[https://www.medicamondiale.org/fileadmin/redaktion/5\\_Service/Mediathek/Dokumente/English/Documentations\\_studies/141128\\_Research\\_We-Are-Still-Alive\\_CR-Medica-Zenica\\_medica-mondiale.pdf](https://www.medicamondiale.org/fileadmin/redaktion/5_Service/Mediathek/Dokumente/English/Documentations_studies/141128_Research_We-Are-Still-Alive_CR-Medica-Zenica_medica-mondiale.pdf)> accessed 3 October 2018.

<sup>45</sup> Helms (n 31) 115.

The current projects are shaped around the improvements in the legal regulations and the applications of the regulations in the field. Women's rights NGOs mostly direct their activities to this area, especially to the prevention of domestic violence. Interviewee 17 highlighted that:

“We constantly promote the SOS line number to the society, so that people in the community would know that they can call this number in case they are victims of, or they know somebody who is victim of, domestic violence. In the framework of providing assistance and help to women and children who are victims of domestic violence, we have a legal aid department. Here we are providing legal help to women who are victims of domestic violence and the beneficiaries in the safe houses. In the safe houses, apart from the psycho-social and therapeutic support [sewing, hairdressing, or tailoring work to overcome the trauma], we also guide these women [domestic violence victims] legally in the cases if they want to divorce from violent partners and if they want to acquire their legal part of the estate or if they want to take care of children after the divorce.”<sup>46</sup>

Interviewee 17 gives a clear summary of the current NGO activities in Bosnia and Herzegovina with her words here. In addition to legal aid for domestic violence survivors, in the safe houses women can access psychological support but also ‘therapeutic work’ such as sewing, hairdressing or tailoring. As has been underlined in the first section of this chapter, the NGOs also try to find jobs for women in the safe houses during this time.

Now I turn to the opinions of the interviewees on these activities and I aim to investigate the extent to which such projects are considered ‘gender transformative’ by my interviewees: not all interviewees consider the women's rights NGOs and their projects gender transformative.

Interviewee 25 remarked that:

“Many women's organisations started mushrooming in Bosnia and Herzegovina after the war. These are not necessarily feminist organisations. They are

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<sup>46</sup> Interviewee 17.

organisations helping women victims. However, they are not really empowering these women. These organisations are doing the so-called project-driven feminism.”<sup>47</sup>

Interviewee 21 on similar lines argued that:

“NGOs just cover the things that state did not provide just to get more money from the state. Instead of pushing the state to take responsibility, this is what the NGOs are doing. They actually create a neo-liberal peacebuilding process: NGOs take a position to help several women instead of hundreds. Under the name of economic empowerment, they give small amounts of money. So, they have the assumption that every single woman wants to be a businesswoman so that they can work with a small amount of money by doing sewing, and they can build their dream on this small amount of money.”<sup>48</sup>

Although some of the interviewees talked about the activities of the NGOs as feminist activities, some of my interviewees were highly critical about the NGOs’ activities for being co-opted by the state and international donors. However, here in my opinion, the problem is the ambiguous framework that transformative justice presents. Although many feminist scholars maintained the need for a feminist or gender-friendly transitional justice process,<sup>49</sup> *what exactly these terms require has not been explored*. On a theoretical level, terms such as ‘gender inclusive transitional justice’ and ‘feminist peacebuilding’ might seem to comprise meanings and frameworks, but in the fieldwork the scope of these terms became blurred. The activities undertaken by the NGOs or government institutions can be considered both as gender-inclusive and also at the same time as reproducing gendered stereotypes by different groups in the field.

One of the challenges of the fieldwork has been to put forward the causes of this division in the opinions. The disagreements and disputes within the literature on feminism echo in the field as well. The questions of ‘What is empowerment?’ ‘What is gender equality?’ depends on who answers these questions. The perspective taken becomes the main decisive

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<sup>47</sup> Interviewee 25.

<sup>48</sup> Interviewee 21.

<sup>49</sup> See Susanne Buckley-Zistel and Ruth Stanley (eds), *Gender in Transitional Justice* (Palgrave Macmillan 2012); O’Rourke (n 28); Susan Harris Rimmer, *Gender and Transitional Justice: The Women of East Timor* (Routledge 2010).

factor in answering these questions. Although transformative justice is a nascent field and there is still a small literature on the gender dimension of the theory, there has been no research exploring the close *link between the feminist approach taken and the evaluation of the 'success' of the activities in the field*. This would enable the researchers in this field to explore how the 'empowerment' or 'feminism' is *constructed* in the field of transitional justice.

Interviewee 9 clarified this issue:

“What you see in Bosnian laws is that they include some goals and some changes that they want to do. They always say, ‘Men and women are equal.’ But on what level and what they are really proposing to reach with this goal is always missing.”<sup>50</sup>

The interviewee highlights here the absence of the ‘proper means’ to reach these goals. Thus, the ‘how’ question remains unanswered. In the specific case at stake, ‘which *political* understandings of feminism or gender equality are influential’ needs to be answered. Elissa Helms also questions this point in her book and she concludes that the NGOs in Bosnia and Herzegovina distance themselves from the distrusted area of ‘dirty’ politics;<sup>51</sup> this gives the impression that the NGOs remain neutral and apolitical in their work. During my fieldwork I also pondered on this issue and I preferred to ask my interviewees whether this was true. Interviewee 1 pointed out that:

“We believe that what is personal is also political. That is what we believe while doing our work.”<sup>52</sup>

I concur with Interviewee 1 and abstain from categorising these activities of the NGOs as totally apolitical.

Some interviewees elaborated the meaning and content of gender equality in the Bosnian context by giving examples from their own experiences. I here present the views of three

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<sup>50</sup> Interviewee 9.

<sup>51</sup> Helms (n 31) 108.

<sup>52</sup> Interviewee 1.



interviewees in order to further elaborate the meaning of ‘gender equality’ in the case of Bosnia and Herzegovina. Interviewee 11 remarked that:

“Yesterday we were in a very small village near [...] We were talking about women’s basic needs. They do not have a gynaecologist or a doctor in the village although this village is only one-hour away from Sarajevo [the capital]. We still talk about basic human needs here. This is feminism for us: Feminism is not only a movement. Feminism is also to sit down and listen to those women’s basic needs.”<sup>53</sup>

Interviewee 4 brought forward her own experience:

“[an NGO’s name] organised a platform and connected the politicians with the women from [...] village. So, politicians had the opportunity to hear these women’s voices. The women told me in this platform that “[the NGO’s name] allocated for us some rooms in the village so that we can do sewing. But the chief of the village does not allow us to use it.” I contacted with the chief right after and the problem was solved. It sounds like it is not the biggest problem for [the city’s name] but it was the biggest problem for these women in this village.”<sup>54</sup>

Although particular projects (sewing, hairdressing, tailoring and so on) that the NGOs carry out in the field sound problematic in terms of reproducing and reinforcing gender stereotypes and patriarchal norms, the issue needs to be analysed from two perspectives. *First*, deciding on the extent to which these projects provide gender equality in the society can be given on the basis of one’s own feminist approach. *Second*, the ‘for whom?’ question matters in this discussion as well. As Interviewee 4 pointed out, for these women in the field the projects might be of high importance.

On this point Interviewee 16 detailed:

“In a project, we helped women to reconstruct their houses. Democratisation as a term for these women did not mean anything, because they needed basic stuff

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<sup>53</sup> Interviewee 11.

<sup>54</sup> Interviewee 4.

such as reconstruction of their houses, having food or proper clothing. Democratisation does not help them because they need direct help. So, we started giving domestic animals, so they were able to feed their families.”<sup>55</sup>

These interviews show that in Bosnia and Herzegovina ‘*needs-based*’ feminism takes priority. However, this does not mean that needs have been the only priority and concern. As Helms explained and I also observed during my internship, improving the legislation and working towards the enforcement of the legal regulations are also among the main concerns of the NGOs in Bosnia and Herzegovina.<sup>56</sup>

One of the most striking findings was to observe the differences on understandings of ‘gender equality’ between the international funders and the local society. In my fieldwork, I put forward specific questions in order to learn the meaning of ‘gender transformative justice’ for my interviewees. They brought forward examples based upon their experiences which can be called as ‘gender transformative,’ i.e. challenging the patriarchal norms and “steering away from reproducing gender subordination”.<sup>57</sup> Interviewee 2 gave such an example:

“During the war, the Islamic community issued a fatwa<sup>58</sup> which was encouraging women who went through wartime rape not to be ashamed and not to carry any stigma. The fatwa said they should freely talk about what they went through. This was a huge step. Because the Islamic community was aware how big the stigma is in an Islamic family where the woman is the pillar of the family. That is why this was a revolutionary step.”<sup>59</sup>

Another striking example came from Interviewee 7:

“To prevent domestic violence, we started a project with imams.<sup>60</sup> We educated imams on how to recognise if there is domestic violence and on how to deal with this problem. Because people especially in rural areas so much care about what

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<sup>55</sup> Interviewee 16.

<sup>56</sup> Helms (n 31) 115.

<sup>57</sup> Rubio-Marin (n 35) 32.

<sup>58</sup> Fatwa is a ruling based on Islamic law.

<sup>59</sup> Interviewee 2.

<sup>60</sup> Imam is a worship leader of Muslim community.

imams say. The other reason is that most of the men only listen to what men say unfortunately. So, we started our seminars about domestic violence with the imams. Mostly they talked in the mosques about domestic violence but also sometimes they went to people's houses to solve the domestic violence problem.”<sup>61</sup>

These examples seem to be in accordance with the idea of ‘gender transformative justice’ which has been developed by feminist scholars. These examples both challenge the traditional gender stereotypes and also aim to provide gender justice. It has been interesting to see that both examples above carry out gender justice by cooperating with religious actors. This may be due to the close connections between the embedded religious norms and traditional patriarchal hierarchies. They have links. As these experiences of the interviewees illustrate, challenging the gender stereotypes might be carried out by cooperating with religious institutions and actors who advocate gender equality.

However, the international community and the projects that they supported in Bosnia and Herzegovina prejudge the religious NGOs. It has been interesting to see in my fieldwork that there are different *hierarchies* and *power relations* among the NGOs as well. This hierarchy emerges, among others, as a result of the funding policies. Little is known about the role and status of the religious NGOs in Bosnia and Herzegovina in terms of their present and potential contribution to the peacebuilding and justice process. Interviewee 7 made me aware of the problems they experience by saying that:

“Unfortunately, we do not have any cooperation with UN. We tried. We sent many projects, but we did not get any funding. There is a clear-cut discrimination. People recognise us as Islamic and religious organisation. But we are not a Muslim organisation; we are faith-based. Women who come to our centre are from different religions. Regardless of the religions or nationalities, our aim is to help women. Some of us wear hijab, yes. That is why people recognise us as a religious organisation. Very recently, some ministries and institutions started to recognise us as partners. But it took 15 years and we always needed to explain things more than the other NGOs.”

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<sup>61</sup> Interviewee 7.

I consider this issue as another example of the ‘top-down’ peacebuilding model that the international community developed. It seems that the UN and other sponsors have agreed upon the main causes of the war in Bosnia and Herzegovina. In addition to this, it seems that the solutions to deal with the past and to bring justice to the society have also been presented by these international actors. This is another example of the failure to address the contextuality and to bring the voices and demands of the ‘local’ people forward. There are certain priorities “determined by donors who [are] mostly applying their western perceptions without considering local conditions”.<sup>62</sup> Under these priorities, religious NGOs have been the ones neglected for supposedly being “exclusive and against multi-ethnic state of Bosnia-Herzegovina”.<sup>63</sup> In this point I concur with Elissa Helms when she expressed that:

“(...) meaning attached to religion in [Bosnia and Herzegovina] were surrendered to nationalism. Instead of reclaiming religion and ethnicity by considering how they might find a meaningful place in women’s lives without contributing to oppressive social structures, women’s NGOs and their donors had effectively left them to the nationalists.”<sup>64</sup>

Another disparity between the donors’ policies and opinions of the ‘local’ people that I observed related to the projects carried out in the scope of the UN Security Council Women, Peace and Security (WPS) agenda. As discussed in this thesis, the Security Council has issued a number of resolutions in order to encourage and promote the participation of women in the peacebuilding processes.<sup>65</sup> UN WPS Resolutions have been criticised by many scholars for prioritising “the advancement of a presumed set of ‘women’s interests’ in peace and security”.<sup>66</sup> Although the WPS agenda started with a resolution (Resolution 1325) which focuses on women’s agency, later this changed and women’s ‘victim’ roles came to the

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<sup>62</sup> Muhidin Mulalic, ‘Fostering of Civil Society by Muslim Women’s NGOs in Bosnia and Herzegovina’ (2014) 34 *Journal of Muslim Minority Affairs* 438, 440.

<sup>63</sup> *ibid* 442.

<sup>64</sup> Helms (n 31) 133.

<sup>65</sup> See Chapter 4.

<sup>66</sup> Catherine O’Rourke, ‘Walk[ing] the Halls of Power? Understanding Women’s Participation in International Peace and Security’ (2014) 15 *Melbourne Journal of International Law* 128, 131. See also Dianne Otto, ‘The Security Council’s Alliance of Gender Legitimacy: The Symbolic Capital of Resolution 1325’ in Hilary Charlesworth and Jean-Marc Coicaud (eds), *Fault Lines of International Legitimacy* (CUP 2012) pp 239-276; Dianne Otto, ‘The Exile of Inclusion: Reflections on Gender Issues in International Law over the Last Decade’ (2009) 10 *Melbourne Journal of International Law* 1; Dianne Otto, ‘Women, Peace and Security: A Critical Analysis of Security Council’s Vision’ (ISE Women, Peace and Security Working Paper Series, 2016) <<http://blogs.lse.ac.uk/wps/2017/01/09/women-peace-and-security-a-critical-analysis-of-the-security-councils-vision/>> accessed 3 October 2018.

forefront (with the Resolutions 1820 and 1888). This change in the language created debates among feminist scholars.<sup>67</sup> Later, the agenda resumed issuing resolutions which aim to promote women's participation to the decision-making positions.<sup>68</sup> However, the practice remains disputable.

The implementation of the resolutions in the case of Bosnia and Herzegovina is mostly carried out with the promotion of women's participation in the police and military forces. Interviewee 18 commented on the implementation of the WPS agenda:

“All the governmental institutions which are relevant for women, peace and security (Ministry of Defence, Ministry of Security, Ministry of Justice, Ministry of Foreign Affairs) implement these resolutions and do gender mainstreaming. Let's say, for example, when Ministry of Defence publish call for employment, they add that “women are strongly encouraged to apply”. There are also changes in the tests that women are expected to pass. In 2010 we had only 23 women applied for a job in armed forces; as a result of these kinds of affirmative measures, in 2016 this number was around 600.”<sup>69</sup>

The participation of women in the police and armed forces is closely linked with the discussion on ‘descriptive and substantive representation’ in the feminist literature.<sup>70</sup> While descriptive representation refers to the physical presence of women in decision-making positions, substantive representation refers to the representation of the interests of women in these positions.<sup>71</sup> Here ‘what are the interests of women, then?’ is the question that needs to be answered. For the purpose of the thesis, I analyse and scrutinise the impact of these types of representation from the perspective of gender transformative justice. As defined in the thesis, gender transformative justice would be expected to “steer away from reproducing

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<sup>67</sup> See for a critical reading of the Resolutions 1820 and 1888, Gina Heathcote, ‘Force, Feminism and the Security Council’ (SOAS Law Working Papers, No: 6, 2010) <[https://eprints.soas.ac.uk/22061/1/Heathcote\\_22061.pdf](https://eprints.soas.ac.uk/22061/1/Heathcote_22061.pdf)> accessed 3 October 2018; Sam Cook, ‘Security Council Resolution 1820: On Militarism, Flashlights, Raincoats, and Rooms with Doors – A Political Perspective on Where It Came from and What It Ends’ (2009) 23 *Emory International Law Review* 125; Laura J. Shepherd, ‘Sex, Security and Superhero(in)es: From 1325 to 1820 and Beyond’ (2011) 13 *International Feminist Journal of Politics* 504.

<sup>68</sup> See UN SC Resolution 2122 (18 October 2013) UN Doc S/RES/2122.

<sup>69</sup> Interviewee 18.

<sup>70</sup> See Hannah Pitkin, *The Concept of Representation* (University of California Press 1967); Judith Squires, *Gender in Political Theory* (Polity Press 1999); Anne Phillips, *The Politics of Presence* (OUP 1995).

<sup>71</sup> O'Rourke (n 66) 136.

gender subordination”<sup>72</sup> and challenge the traditional gender hierarchies. Gender transformative justice also aims to prevent the same atrocities from recurring.<sup>73</sup> That is why the main causes of the conflicts and the structural violence in the society at stake should be addressed according to the theory of gender transformative justice.<sup>74</sup> Then, the questions are: To what extent is the participation of women to the military and police forces gender transformative? Are these ‘affirmative measures’ able to prevent the same atrocities from recurring? Have the main causes of the violence against women (according to most of my interviewees: ethno-nationalism and patriarchy) in Bosnia and Herzegovina been eliminated with the participation of women in the military and the police forces?

Interviewee 15 commented on this issue:

“From my own personal experience, this issue is also about where we push these women to. I mean you are pushing these women to militarist and patriarchal structures without even addressing how they organise their everyday lives there. Are we trying to empower them to function within the patriarchal structures which are very oppressive towards them? It is about responsibility on what we do: *should we just have 50 percent women there and let them endure whatever they have to endure, or do we change the structures?* For instance, it turned out that UN Peacekeeping Forces were treating women in a very aggressive, abusive, and violent way. If this is happening in the UN, what are we supposed to expect from individual states then? We were a very militarized state before the war. And war happened. But after the war, *still nobody talks about de-militarisation.*”<sup>75</sup>

Here it is important to underline that what is presented to a post-conflict society as an achievement for gender equality demonstrates the ways in which the concepts of ‘women’s empowerment’ and ‘feminism’ are *constructed*. Participation of women in the domestic military and police forces and also in peacekeeping forces is regulated and promoted under international law through the UN Security Council WPS agenda. The individual countries actually merely practice the law in their own context through such projects. While some interviewees considered the participation of more and more women in military and police

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<sup>72</sup> Rubio-Marin (n 35) 32.

<sup>73</sup> See Chapters 2 and 3.

<sup>74</sup> *ibid.*

<sup>75</sup> Interviewee 15 (emphasis added).

forces as an achievement, some of them were highly critical about such measures. Although ‘gender transformative justice’ or ‘women’s empowerment in post-conflict situations’ seems to comprise its own undisputable agenda, my fieldwork illustrates that the terms blur in the field. The achievement of the projects depends from which perspective the evaluation is made.

Although transformative justice is a nascent field and there is still a small literature on the issue of gender dimension of transitional justice mechanisms, there has been no research exploring the close link between the feminist approach taken and the evaluation of the ‘success’ of the activities in the field. Furthermore, my fieldwork has also illustrated that asking the question ‘what is women’s empowerment?’ gives insight into how the ‘empowerment’ is *constructed through transitional justice* in that particular social context. Thus, my fieldwork enabled me to explore and comprehend how the ‘feminist’, ‘feminism’, ‘gender equality’, ‘gender justice’, and ‘women’s empowerment’ concepts have been constructed through transitional justice process in Bosnia and Herzegovina.

#### 4. Conclusion

This chapter discussed the *continuum of violence* principle of gender transformative justice model. By illustrating the ways in which violence against women continues, the chapter underlined that unaddressed structural violence against women in Bosnia and Herzegovina results in continuums in the violence. The chapter emphasised the disparity between the legal regulations on paper and women’s real-life experiences. It has been concluded that such a disparity is a result of patriarchal norms and gender stereotypes in the society. The current transitional justice theory and practice is far from addressing these traditional norms and gender inequalities.

Gender transformative justice, as discussed along this thesis, requires the transition process to challenge the patriarchal norms and to refrain from reproducing the pre-existing gendered hierarchies. However, gender transformative justice process and mechanisms are context-dependent. In this thesis, I dwelt on the meaning and scope of ‘gender transformative justice’ in the context of Bosnia and Herzegovina. By bringing the data from the fieldwork, how ‘gender transformative’ is conceptualised both by women on the ground and also by the NGOs and the governmental and regional bodies has been illustrated. The chapter

concluded that the international community's understanding of 'gender transformative' does not correspond to Bosnian women's own understandings of the term.



## Chapter 9: CONCLUSION

### 1. Introduction

This thesis examined the extent to which the peacebuilding process in Bosnia and Herzegovina has provided gender transformative justice. The researcher carried out original research by bringing different groups of literature together. By engaging with the theory of conflict transformation and different feminist approaches regarding wartime violence against women, this study contributed to the development of the theory of gender transformative justice. Application of the theory over the case study enabled the researcher to provide insights into the underlying reasons for the ongoing violence against women in the transition period in Bosnia and Herzegovina.

The next section reflects on the initial research questions and relates these to the findings in the thesis. The chapter then in section 3 makes recommendations for future research. The chapter concludes in section 4 that in order to provide a gender transformative justice, transitional justice mechanisms must be re-designed by taking into consideration the principles that this thesis has argued for.

### 2. Summary of the Research

Transition periods have been considered as ‘windows of opportunities’ by feminist scholars in order to change the societal structures. However, it has been observed that ‘gender-neutral’ transitional justice mechanisms fall short of providing such a change and send women back to the societies where they would be victims of different types of violence during the ‘post-conflict’ periods. Transformative justice theory emerges from a *disappointment* and *dissatisfaction* with the theory and practice of transitional justice. However, the dissatisfaction with the transitional justice emerged in different fields. For instance, some scholars have argued that transformative justice can be provided by addressing the economic and social rights of post-conflict societies.<sup>1</sup> Or, in the education field, for example, the transformation

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<sup>1</sup> See Matthew Evans, ‘Structural Violence, Socioeconomic Rights, and Transformative Justice’ (2016) 15 *Journal of Human Rights* 1; Paul Gready and Simon Robins, ‘From Transitional to Transformative Justice: A New Agenda for Practice’ (2014) 8 *International Journal of Transitional Justice* 339; Paul Gready, *The Era of Transitional Justice: The Aftermath of the Truth and Reconciliation Commission in South Africa and Beyond* (Routledge 2011).

concept is regarded as the main solution for the elimination of the continuums in the violence.<sup>2</sup>

For feminist scholars, the concept of transformative justice, in this thesis called as *gender transformative justice*, is an approach aiming to eliminate the still-ongoing violations after conflicts. The keystone is to ‘subvert pre-existing structural inequalities’<sup>3</sup> which led to the most aggravated forms of violence against women during the conflicts. In addition to addressing the continuums in the violence, gender transformative justice also aims to challenge the root causes of, and underlying reasons for, the violence against women during the conflict. By adopting gender transformative justice as an approach, the researcher aimed to contribute to both the theory and the practice of transformative justice through asking the following three sub-questions in order to address the main question: the extent to which the transition period in Bosnia and Herzegovina has been gender transformative.

The first sub-question was ‘what is gender transformative justice and what does it offer to women which is different from transitional justice?’ This question sets out the theoretical framework of the thesis. To address the question, in Chapter 2, the researcher examined the conceptual framework of transformative justice and its gender aspect. It has found that transitional justice mechanisms cause crucial problems in current practice when they are examined through a gender lens. The researcher argues that transitional justice fails to provide gender equality in post-conflict societies by neglecting the reasons for the violence against women pre-dating the conflict. Retribution-based transitional justice does not address the other pillars of justice. In such a context, the links between pre-conflict, during conflict, and post-conflict are paid no attention. As a result, structural inequalities and power asymmetries remain intact.

Transitional justice remains legal-centric and does not engage with the peacebuilding theories. Adopting John Paul Lederach’s conflict transformation theory, the researcher argued that the ways in which violence is analysed and the terms of peace and conflict are examined under this theory should be adopted for gender transformative justice. By

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<sup>2</sup> See Special Issue of *Asian Journal of Peacebuilding* in May 2018 <<http://tongil.snu.ac.kr/xe/ajp>> accessed 3 October 2018.

<sup>3</sup> Ruth Rubio-Marin, ‘Introduction: A Gender and Reparations Taxonomy’ in Ruth Rubio-Marin (ed.), *The Gender of Reparations: Unsettling Hierarchies While Redressing Human Rights Violations* (CUP 2009) pp 1-17, 6. See also Fionnuala Ní Aoláin, ‘Transformative Gender Justice?’ in Paul Gready and Simon Robins (eds), *From Transitional to Transformative Justice* (CUP 2019) pp 150-171.

scrutinising the underlying reasons for wartime violence and challenging the peace and war dichotomy, conflict transformation aims to provide a peacebuilding process which empowers marginalised groups (including women) in the societies. Although Lederach does not present a gender-based analysis, his theory makes room for this. Overlapping themes between conflict transformation and feminist transitional justice literature give an opportunity to create a model for gender transformative justice. The main principles of this model are: contextuality, continuum of violence, different pillars of justice, and addressing the root causes of the violence. By taking into consideration these principles, gender transformative justice offers context-dependent and more holistic solutions in order to tackle wartime violence against women which occurs as a result of vulnerabilities pre-dating a conflict.

Chapter 3 clarified the interaction between feminist literature and gender transformative justice. The last principle of gender transformative justice (addressing the root causes of the violence) is examined thoroughly in this chapter: the main enquiry was to find out the feminist approaches on the causes of wartime violence against women and the extent to which they come to terms with conflict transformation and transformative justice theories. Examination of the feminist literature regarding wartime violence against women showed that feminist scholars do not consider wartime as an exception, and that they do reveal the connections between peacetime and wartime violence against women. Observing such connections renders transitional justice unhelpful in terms of challenging the pre-existing gendered hierarchies which cause more harm to women in conflict and post-conflict settings. In this regard, gender transformative justice is a more promising theory for providing a gender-just peace process. The principles of the model suggested in the previous chapters echo here: theories of conflict transformation and transformative justice correspond to feminist approaches on the wartime violence issue. Gender transformative justice requires a peace process to be transformative by eliminating gendered hierarchies.

The second sub-question was whether international law and its domestic application in Bosnia and Herzegovina provides gender transformative justice. Having identified feminist discussions regarding wartime violence against women and their repercussions in the theory of gender transformative justice, Chapters 4 and 5 focused on whether such a transformative impulse exists in the legal field. In Chapter 4, a detailed analysis of the UN WPS agenda and other international law documents in relation to women and peacebuilding shows that

international law falls short of providing gender transformative justice. Root causes of wartime violence against women are simply ignored in these documents, and gender stereotypes are reinforced. Although in the WPS resolutions women's agency roles are highlighted, pre-existing inequalities and structural violence which could prevent such roles are given no attention. 'Protection' of women during the conflict settings is emphasised without questioning the reasons for this vulnerability. The resolutions and the international declarations fail to investigate the root causes of violence; militarism, armament, masculinity, patriarchal structures remain unquestioned.

Implementation of these 'gender-neutral' international law documents in the domestic sphere creates problems. Having analysed the NAPs of Bosnia and Herzegovina, it is seen that there are no accountability mechanisms created by the UN in order to measure the *success* of the NAPs. The real-life impact of the NAPs on women's everyday lives are not scrutinised. Bosnia and Herzegovina's NAPs, with the direction of the WPS agenda, mostly concentrated on gender mainstreaming in the legal, political, and security spheres. Such NAPs create 'one size fits all' remedies irrespective of the contextual needs of the individual countries. In addition, continuums in the violence draws no interest; and the root causes of the violence and structural inequalities going beyond the 'end' of the conflict remain intact. WPS agenda and, their domestic implementation, NAPs, fail to look at the different pillars of justice, even though it cannot be said that the legal pillar is fully provided for. Economic and social rights remain out of the scope of this agenda; how economic and social inequalities result in more harm for women are not taken into consideration and no remedies provided for that.

A detailed examination of the legal framework under international law regarding women and peacebuilding continues with reparations in Chapter 5. The reparations mechanism of transitional justice is the one holding most of the potential for gender transformative justice since international declarations on reparations acknowledge that origins of wartime violence against women predate the conflicts. However, due to the lack of accountability mechanisms, an implementation gap occurs. This is illustrated through the case of Bosnia and Herzegovina. Domestic courts failed to connect the individual vulnerabilities with structural violence while issuing reparations for women victims of the war. Moreover, in Bosnia and Herzegovina, the ideas of masculinity, nationalism, militarism are reinforced through the reparations mechanisms as shown by using different examples. This makes the reparations mechanisms unhelpful in terms of subverting the pre-existing structural gender inequalities.

In addition, the thesis argues that gender transformative justice cannot be provided through only reparations in isolation from the other mechanisms of transitional justice (trials, truth, institutional reforms). This is validated through an analysis of the case of Bosnia and Herzegovina. Bosnia and Herzegovina is a good example in terms of illustrating the significance of the integration of all transitional justice mechanisms in order to provide gender transformative justice. The lack of a shared truth by all the parties to the conflict causes the reparations mechanisms to be limited within each ethnic group. Such a context does not challenge nationalism and keeps the ethnic divisions alive; this gives women the role of being *symbols of the nation*. The reparations mechanism, therefore, becomes a means to sustain gendered hierarchies and an obstacle to gender transformative justice.

The third and final sub-question was ‘what difficulties arise in the field for the implementation of gender transformative justice?’ Having analysed the theoretical and international legal framework of gender transformative justice, the researcher threw light on the ongoing transitional justice process in Bosnia and Herzegovina in order to find out the obstacles to gender transformative justice in this specific context. For this, fieldwork findings have been used. 26 interviews were conducted with both *elites* and *victims* in Bosnia and Herzegovina. Interviews confirmed the validity of the model suggested for gender transformative justice (developed in Chapters 2 and 3). The principles of the model have echoed in the interviews. The fieldwork findings have been categorised under these principles in Chapters 7 and 8. Before analysing the fieldwork data, the researcher preferred to give insights into the process of collecting data and the methods used. This has been provided in Chapter 6. Chapter 6 presented a reflective and comparative analysis regarding the data gathering methods.

The first category of the findings is analysed in Chapter 7 under three principles of the gender transformative justice model: contextuality, addressing the root causes of the conflict, and going beyond the legal justice.

*Contextuality*: The peacebuilding process in Bosnia and Herzegovina has not fully met the needs and expectations of women on-the-ground. The transition period produced mechanisms without considering the contextual needs in the field. This principle of gender transformative justice requires the involvement of women on-the-ground to be the main decision-makers in peacebuilding process. However, in practice, internationally-funded

projects direct and manage the peacebuilding process and decides on what the country needs. The process and the legal frameworks remain top-down in contradistinction to the theories of conflict transformation and transformative justice.

*Addressing the root causes of the violence:* Both international and domestic frameworks have paid no attention to the underlying reasons for the wartime violence against women. Interviewees referred to nationalism, masculinity, militarism, and patriarchal norms in order to explain the reasons for the wartime violence and the continuums in the violence against women in post-conflict Bosnia and Herzegovina. However, starting from the peace agreement, legal and political measures have not alleviated and addressed these reasons, if not aggravated them. Although Bosnia and Herzegovina has strong legislation regarding gender equality, patriarchal norms, nationalism, masculinity, and militarism become the obstacles for gender transformative justice to be fully achieved. These laws are not fully implemented. International legal frameworks neglect enforcing post-conflict states to take transformative changes in the societal structures in order to eliminate the gender inequality. This causes the transition periods to reinforce the gendered hierarchies.

*Going beyond the Legal Justice:* This principle challenges the definitions of victimhood in the legal frameworks. The study highlighted that laws remain limited and very male-centric in terms of defining the harms. Many harms women endure miss the attention of the legal authorities and international sponsors. Socio-economic and psycho-social harms exist; political marginalisation continues. They all play a role in maintaining the structural violence against women. In Bosnia and Herzegovina, the failure to address these components of justice creates continuums in the violence and eventually reinforces structural violence against women. It has also been found upon the analysis of the fieldwork data that multiple justice needs of women remain unaddressed since wartime violence against women has been multifaceted. To address all the fronts and in order not to send women back to the societies where they would be the victims of any sort of violence, different pillars of justice should be addressed simultaneously.

Chapter 8 concentrated on the current transition period more deeply. The chapter looks at the fourth principle of gender transformative justice, the *continuum of violence*, and then gives insights into the meaning of transformation in the Bosnian context. An examination of the continuum of violence principle shows that post-conflict violence against women cannot be

considered as only the result of wartime violence. Violence stretches across pre-, during, and post-conflict. It is found that the binary language of conflict and post-conflict makes the continuums in the violence and structural violence invisible. In the current situation, domestic violence is the most investigated violence in the country. However, the data gathered revealed that patriarchal norms in the society prevent the legal frameworks from being implemented to the fullest extent. Traditional gender roles are still strong in Bosnia and Herzegovina today. Although there are still a good number of women's rights NGOs dealing with the impacts of the war, the international community ignores the long-term effects of the war on women and withdraws the financial support from these NGOs. The transitional period fails to challenge the pre-existing structural gender inequalities that stretch to today.

Chapter 8 in the second section looks at the current peacebuilding and gender-justice initiatives carried out by both the NGOs and governmental institutions in Bosnia and Herzegovina and investigates whether these projects confront the traditional gender roles and structural violence and provide gender transformative justice. The findings indicate that the ongoing projects (mostly concentrated on sewing, hairdressing, and tailoring) reinforce the gender stereotypes. Although legal frameworks are improved on paper, their gender transformative effect on women's everyday lives has not yet occurred.

### **3. Moving Forward**

The fieldwork and theoretical analysis carried out in this thesis map out a gender transformative justice model. The findings in this thesis, while standing alone as a piece of research, also provide an important resource for future researchers to conduct further research. The meanings of justice and transformation need to be further investigated by feminist scholars. In order to create momentum for a feminist intervention during transition periods, more research is needed in relation to the conceptual framework of 'gender transformative justice'. This present study, by engaging with theories of conflict transformation and transformative justice, suggests a model which could create gender transformative justice for Bosnia and Herzegovina. Although there are several transitional justice scholars who engage with the theory of conflict transformation, there has been little qualitative analysis applying the theory of conflict transformation in the field. With its more

elaborated theoretical framework, conflict transformation theory can enable the scholars to develop a more comprehensive theoretical framework for transformative justice.

In the transformative justice field, the literature mostly focuses on the reparations pillar of transitional justice. Feminist scholars mostly concentrate on the transformative potential of reparations for women. However, little is known about the potential transformative aspect of trials, truth initiatives, or institutional reforms. As underlined in Chapter 5, the reparations pillar alone cannot provide gender transformative justice without also providing fair trials, a shared truth, or institutional reforms. Further work is required to scrutinise, for instance, how truth initiatives can be helpful for women victim and witnesses to deal with the continuums in the violence. In future investigations, it might be possible to broaden the current limited scope of the transitional justice mechanisms and to explore their gender transformative potentials.

Under international law, through UNSC WPS agenda, states, whether or not conflict-affected, are required to adopt National Action Plans (NAPs) for encouraging and facilitating the participation of women in peacebuilding and transitional justice processes. Although the UNSC WPS agenda has an established literature, NAPs, as the accountability mechanisms of this agenda, are paid little attention by the scholars. Not only Bosnia and Herzegovina's NAPs, but also other countries' NAPs are not examined sufficiently by international law scholars. I argued in Chapter 4 that when the NAPs are adopted through an engagement with the other international law documents, such as CEDAW or Istanbul Convention, they can be useful tools for gender transformative justice process. By engaging with the NAPs as essential international law documents, this thesis draws attention to these documents and their impacts in the fields.

#### **4. Final Reflections**

The theories of transformative justice and conflict transformation inspired and influenced this study. Both theories look at the concepts of conflict and peace not through a simplistic gaze; they point out the complicated nature of the conflicts and the harms in these processes. These theories aim to scrutinise the root causes of the wartime violence and the ways in which they occur, and to identify the continuums in the violence after the conflicts 'end'. Such comprehensive understandings overlap with the feminist approaches to the war and



peace. During the analysis of the feminist literature on wartime violence against women, theories of transformative justice and conflict transformation have gained more meaning. The intersection points became clearer during the analysis, and this enabled the researcher to create and propose a model for gender transformative justice.

The theory of gender transformative justice has implications on how to understand the wartime violence against women in Bosnia and Herzegovina. Using rape and pregnancies as a 'weapon' during the war brings forward the masculinities, patriarchal society structures, and nationalism as the root causes of the violence. Subordination and marginalization of women in times of post-conflict cannot be separated from the wartime violence as seen in the case study. This requires the transition periods to recreate mechanisms and measures to tackle the 'preexisting structural gender inequalities'<sup>4</sup> while providing remedies. Such an approach considers pre-, during, post-conflict violence against women relevant and related, and expects the transitional justice mechanisms to deal with them altogether (continuum of violence).

When the findings are analysed through gender transformative justice approach, in the current transition process in Bosnia and Herzegovina, the root causes of the wartime violence remain unaddressed. Patriarchal norms and gender stereotypes are prevalent in the society. It has been interesting to observe that both international and national laws become *instruments* to maintain these norms and stereotypes.<sup>5</sup> International law on women and peacebuilding aims to promote women as the main decision-makers in the peacebuilding processes without creating measures for militarism, nationalism, and patriarchal norms which maintain gender subordination. This reflects on the national laws. The domestic laws in Bosnia and Herzegovina reinforce the militarist and nationalist ideas too.

The study indicates in the fieldwork chapters that such limited measures have created gender-neutral peace and justice process in Bosnia and Herzegovina. Conceptualisation of the harms and violence without considering the needs, expectations, and experiences of women created

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<sup>4</sup> Ruth Rubio-Marin, 'Introduction: A Gender and Reparations Taxonomy' in Ruth Rubio-Marin (ed.), *The Gender of Reparations: Unsettling Hierarchies While Redressing Human Rights Violations* (CUP 2009) pp 1-17, 6. See also Ní Aoláin (n 3).

<sup>5</sup> To read more on a critical approach to 'neutrality' of transitional laws, see Rosemary Nagy, 'Transitional Justice as a Global Project: Critical Reflections' (2008) 29 *Third World Quarterly* 275; Catherine Turner, 'Deconstructing Transitional Justice' (2013) 24 *Law Critique* 193; Catherine Turner, *Violence, Law and the Impossibility of Transitional Justice* (Routledge 2017).

a justice gap for women. The fieldwork data illustrated that the current situation does not represent peace for women. Many forms of violence against women remain unaddressed in the current retribution-based practice. Economic and social rights violations, psycho-social violence, and political violence continue today to different extents. By bringing forward the disparity between justice that has been provided by the international actors and the justice that women on-the-ground expect, this study aims to build on the critical transitional justice studies which demonstrate the gap between top-down and bottom-up understandings of justice.<sup>6</sup>

This study suggests that in order to provide gender transformative justice, the concept of violence needs to be significantly reinterpreted and expanded. During the war in Bosnia and Herzegovina, international actors paid attention to the sexual violence against women. However, violence is multifaceted. For instance, sexual violence can bring along economic and health issues, or psycho-social remedies might be needed.<sup>7</sup> In international declarations and in the UN Security Council WPS Resolutions, different aspects of the harms are ignored. The principle of indivisibility and interdependence of the rights under Vienna Declaration of 1993 needs to be an integrated part of the transition laws. This would create a deeper understanding regarding the meaning and scope of violence.

With the ‘end’ of the Bosnian war, international sponsors directed their attention to different warzones around the world. This is because transition periods are considered “inherently short-term, legalistic and corrective”<sup>8</sup> This creates an illusionary time and space, *a peace*, in which violence against men (‘political’ violence) ends. The terminology on which transitional justice is based is constructed and defined around men’s experiences, priorities, and perceptions. This study found that after the conflict ‘ended’ in Bosnia and Herzegovina, war-related and war-aggravated forms of violence against women became concealed and were carried away to the ‘private’ sphere. The fieldwork data validated how violence against women continues today in varied forms and to different extents.

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<sup>6</sup> See Lia Kent, *The Dynamics of Transitional Justice: International Models and Local Realities in East Timor* (Routledge 2012); Alexander L. Hinton, *The Justice Facade: Trials of Transition in Cambodia* (OUP 2018); Janine Natalya Clark, *International Trials and Reconciliation: Assessing the Impact of the International Criminal Tribunal for the Former Yugoslavia* (Routledge 2014).

<sup>7</sup> See Janine Natalya Clark, *Rape, Sexual Violence and Transitional Justice Challenges: Lessons from Bosnia-Herzegovina* (Routledge 2018).

<sup>8</sup> Lars Waldorf, ‘Anticipating the Past: Transitional Justice and Socio-Economic Wrongs’ (2012) 21 *Social and Legal Studies* 171, 179.

This shows that neglect of gender inequality and structural violence are central to the current transitional justice processes. In such settings, short-term solutions and ‘forgiveness discourses’ became common. As a result, peace is assumed to be provided after the peace agreements are signed. It has been interesting to observe that declaration of peace in such a short-term and prevalence of the ‘forgive discourse’ silence victims’ voices since addressing the wartime violence takes a long time and needs a great amount of funding. Fieldwork data indicated that international sponsors tend to fund the projects which are centred around inter-ethnic projects and reconciliation. However, direct victims of the war might not want to put the past behind and to forgive the perpetrators. The study highlights an underexplored area: the power relations among women which is created as a result of the funding policies. Victims who want to see the perpetrators behind bars become the ‘bad victims’ of the Bosnian war who are disempowered by the lack of funding. Such problematic and unfair practices need to be terminated by creating long-term solutions through long-term funds for all victims.

Some might find this research study ambitious in terms of ‘asking-too-much’. There exist several studies criticising the transformative urge in the transitional justice field since the transformative steps are considered out of the scope of a transitional justice process.<sup>9</sup> However, conducting fieldwork in a ‘post-conflict’ country strengthened and validated the present researcher’s position in the discussion of ‘*transitional justice vs transformative justice*’. The principles of the model for gender transformative justice was often echoed during the interviews. Interviewees underlined that, although strong laws exist in Bosnia and Herzegovina on gender equality, the implementation of the laws remains sporadic and creates a gap. Patriarchy and traditional gender roles have been considered as the main causes of the ‘reality gap’ by the interviewees. This confirmed the point that without dealing with structural violence and pre-existing gender inequalities, it is difficult to make women enjoy their rights provided under national and international laws.

It is not clear in the existing literature whether transformative justice needs and requires additional or new mechanisms in post-conflict societies. This research claims that transitional justice mechanisms (trials, truth initiatives, reparations, and institutional reforms) might

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<sup>9</sup> See Lars Waldorf, ‘Anticipating the Past: Transitional Justice and Socio-Economic Wrongs’ (2012) 21 *Social and Legal Studies* 171; Margaret Urban Walker, ‘Transformative Reparations? A Critical Look at a Current Trend in Thinking about Gender-Just Reparations’ (2016) 10 *International Journal of Transitional Justice* 108.

provide the societies with gender transformative changes if these mechanisms are designed considering the model suggested in this thesis. The research showed that existing laws and mechanisms reproduce the gender hierarchy and structural violence in the society. For instance, the Dayton Peace Agreement of 1995, a 'gender-neutral' agreement, still constitutes the Constitution of Bosnia and Herzegovina today. By bringing a tripartite Presidency, with the chairmanship rotating every eight months, the present Constitution fragments Bosnia and Herzegovina through ethnic lines. Such a Constitution keeps nationalism and masculinities alive in the society.

Trials become another mechanism to reinforce gender subordination. Fieldwork data indicated the difficulties that women witnesses and victims face in the trial procedures and afterwards. Exposing the identities of victims and witnesses is not uncommon; this creates additional difficulties for women victims and witnesses after the trials. Laws on witness protection needs to be strengthened, and more importantly enforced. Reparations, as shown, by allocating more allowance for the war veterans than the war victims, *dignify* militarism and nationalism. The study argues that structural violence against women continues and is reinforced through national and international laws. By taking into consideration contextuality, root causes of the violence, other pillars of justice, and the continuums in the violence, transitional justice mechanisms must be re-imagined and re-designed in order to provide a truly gender transformative justice.

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## Appendix 1

I refrained from calling my interviewees as '*either victim or elite*'. My fieldwork experience presented a more complicated picture. A person might fit in both of these categories simultaneously. For this reason, I avoid re-creating a victim-agent dichotomy in my thesis. Instead I provide an appendix where I give details about my interviewees the extent to which the scope of my ethical approval terms allows.

Interviewee 1: A women's rights NGO head.

Interviewee 2: A women's rights NGO head *and* a wartime violence survivor.

Interviewee 3: A lawyer who is affiliated with varied regional and governmental bodies.

Interviewee 4: A politician in one of the major political parties in Bosnia and Herzegovina, SDA.

Interviewee 5: A women's rights NGO head *and* a wartime violence survivor.

Interviewee 6: A psycho-therapist in a women's rights NGO.

Interviewee 7: A psycho-therapist and a deputy-head in a women's rights NGO.

Interviewee 8: An academic works in a peacebuilding initiative.

Interviewee 9: An entrepreneur, previously involved in the implementation of the UNSC WPS Resolutions in Bosnia and Herzegovina.

Interviewee 10: A psycho-therapist in a women's rights NGO.

Interviewee 11: A human rights activist works in an NGO.

Interviewee 12: A human rights activist previously worked with the NATO, UN Women and in varied regional and governmental bodies.

Interviewee 13: An academic who is interested in the transitional justice process in Bosnia and Herzegovina.

Interviewee 14: A psycho-therapist in a women's rights NGO *and* a wartime violence survivor.

Interviewee 15: A human rights activist currently works with the OSCE.

Interviewee 16: A women's rights NGO head.

Interviewee 17: A lawyer and activist currently works in a women's rights NGO as legal consultant.

Interviewee 18: A senior officer in a governmental body which is responsible for the implementation of the UNSC WPS Agenda in Bosnia and Herzegovina.

Interviewee 19: A lawyer in an international human rights monitoring body.

Interviewee 20: A Women's Rights NGO Head.

Interviewee 21: An academic and a human rights activist.

Interviewee 22: A politician in one of the major political parties in Bosnia and Herzegovina, SDP.

Interviewee 23: A human rights activist.

Interviewee 24: A victims' organisation representative.

Interviewee 25: An academic who is interested in the transitional justice process in Bosnia and Herzegovina.

Interviewee 26: A genocide survivor *and* a representative in an NGO.

## Appendix 2

### INTERVIEW GUIDES

#### Questions

-What is your job title?

-How long have you been working here?

(Here once more I will emphasise the confidentiality of the interview.)

1. Can you describe the aim of the position you are working in?

- What are your main activities?

-What are your fundamental policies and strategies regarding the promotion of women's rights?

-Can you please describe very briefly your role here?

2. Is gender-based violence is still a significant issue in Bosnia today?

- Has there been an increase in gender-based violence in the aftermath of the conflict?

-What could be the reasons for this increase?

-Do you think that this violence has roots/connections with the violence during the war or before the war?

3. What are your observations regarding violence against women in Bosnian society?

-Can we make any generalization regarding their economic situations, or not?

-Do you think that there is a connection between economic violence and domestic violence here?

4. What are the political positions of these women?

-Were/are they politically active in the society before or after the violence?



-Do you think that we can make a connection between political violence and domestic violence against women here?

5. Every post-conflict country has its own contextual problems which are preventing women from transforming their roles in the society; what are those problems in Bosnia?

-What are the main obstacles facing women which are preventing them from transforming their role in society?

-What is your experience regarding those obstacles?

-What are the efforts of your institution with regard to dealing with these obstacles?

-Do you follow a strategy which connects the pre-, during and post-war connections between the violence against women?

6. Do you have any contact from the United Nations (UN)?

-What do you know about the United Nations Women, Peace and Security (UN WPS) agenda?

-Have you heard about the UN WPS National Action Plans of Bosnia-Herzegovina? If yes, what is your opinion regarding these National Action Plans?

-Did you get specific training or specific resources for the implementation of a National Action Plan?

7. Among Bosnian women, is there an increase in the reporting of domestic violence?

-(If yes) What is the reason for that? Growing confidence in public/social services?

-What were the reactions (of women, police officers, courts etc.) towards domestic violence before the conflict?

-Do you see any similarities or differences between the reactions of them before and after the conflict? What has changed or not changed regarding the attitudes of the society, women and social services towards domestic violence against women?

8. Do you think your institution is successfully dealing with gender inequality in the society?

- Is the institution challenging the dichotomy of 'victimhood' vs 'agency'?

-How do you approach victims of domestic violence?

-Are you employing these victims in your organisation?

9. Do you know anything about the pre-war situations of women in the society regarding domestic violence?

-Do we have any data regarding domestic violence incidents at that time (before the war)?

-What were the prior cycles of violence before the conflict in Bosnia?

-What were the mechanisms for coping with then?

10. What is the procedure in your job after you receive an application from a woman who is a victim of violence (of any kind)?

-How is the reporting mechanism working between you and the police?

-Do you think that the police are rigorously pursuing each case after you have referred it?

-What is your experience of this?

-Do you keep track of each case after you have referred it?

-What are the other factors which are impacting on the reporting, other than the rigour of the police?

11. In your work, have you ever come across any disagreement based on ethno-nationalist grounds between women?

-What do you think about this experience?

-Do you think that ethno-nationalist political discourse is impacting women and their relationships with each other?

-Which experience do you depend on when you give this opinion?

12. Is there anything else that you would like to tell me? Thank you.

13. Can I come back to you if I have further questions?

**Questions (and some follow-up questions) for women survivors of violence**

1. Would you please describe how you make a living?

2. Would you please let me know briefly about your political activities, if any?

3. How does/did this violence affect your life?

-What are your coping mechanisms?

4. Do you have more confidence in the social services in Bosnia recently?

-Do they provide you with enough protection?

-Do you think there is a difference in the social services before and after the war?

5. Do you think that punishment regarding domestic violence is appropriate and/or sufficient? -Why do you think so?

-Have you participated in any action to change this?

6. Is there anything else you would like to tell me?