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**GENDER-JUST  
PEACE AND  
TRANSITIONAL  
JUSTICE**



# **ADVANCING WOMEN AGENCY IN TRANSITIONAL JUSTICE**

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# 1. INTRODUCTION

”Peace without justice is only a symbolic peace”

*Nobel Price laureate Rigoberta Menchu*

This paper contributes to an on-going conversation among scholars engaged in the critical peacebuilding research regarding the issue of agency by highlighting the central yet often neglected role of women agency in transitional justice processes. It takes as its point of departure the critical questions repeatedly posed: whose peace, what justice and for whom? Thus, the aim is to critically examine where women are located in the processes of doing justice in post-conflict societies, to map the set of dispositions which exists in these processes that inclines women agents to act/react and in doing so theorize women agency in transitional justices processes. More specifically, we expose and investigate three gendered transitional justice gaps in Bosnia-Herzegovina. First, the accountability gap is revealed and we discuss the legal, physical and socioeconomic discriminatory insecurities of women witnesses, the overall lack of female presence and the misrepresentations of women-as-victims. Second, we examine the acknowledgement gap and attempts at gendering the narrative of the past -commemoration of rape camp such as the one in Foca. Third, the reparation gap is investigated to reimagine reparations programs that may contribute to challenge existing gender hierarchies and bring about social transformation.

Mainstream understandings regard peacebuilding and transitional justice as ungendered practices and discourses that are able to produce just peace in societies emerging from violent conflict. In contrast, the critical peacebuilding research reads peacebuilding and transitional justice as an inherently conflictual process and a site for power relations where the lack of engagement with and empowerment of local agents is understood as one of the reasons for the limited success of the liberal peacebuilding project (Richmond 2011: 420; Björkdahl and Höglund ed. 2013). Such reflexive approach also informs investigations of the gendered dynamics of peacebuilding and transitional justice. Subsequently, critical researchers have begun to analyze how and in what particular ways liberal peacebuilding contributes to the disciplinary and normalizing gender-practices that has come to characterize the gendered post-conflict phase (Meintjes et al 2001; Väyrynen 2010). More recently, focus on transitional justice depicts how transitional justice processes produce a highly

gendered justice (Bell and O'Rourke 2007; Ni Aolain et al 2011; Buckley-Zistel and Stanley ed. 2012). Thus, the gendered hierarchies built into liberal peacebuilding and transitional justice and the absence of women in these processes produce peace and justice gaps that are gendered. As the micropractices of power that takes place in the post-conflict spaces are being mapped and investigated it becomes clear that peacebuilding and transitional justice assign local women a particular type of agency. Here women agency is viewed as passive, protected, civilian and peaceful. Still it is expected that women are to provide a voice of the authentic 'local' and the marginalized and thus vital for localizing peace and justice. Hence a more critical reading of processes to build peace and justice in post-conflict societies as called for by Väyrynen (2010: 147) is much needed.

Such critical reading of peacebuilding and transitional justice can fruitfully be conducted through a gender lens. Yet, the conceptual basis for taking such approach is hampered by the fact that gender is a complex, multi-layered and contested concept. There is little agreement about the basic definition of gender as the socially and culturally constructed identities of men and women and the prevalence of women's subordination to men is key to the gendered hierarchies. The view taken here does not couple femininity with peace and masculinity with war which may postulate women as "pacific Others" (Elshtain cited in Väyrynen 2010: 149). Instead, we employ gender as a concept that informs an understanding of exclusion and marginalization more broadly. Gender analysis then is a way of exploring the forms that subordination takes in any particular spaces, while we choose to zoom in on peacebuilding space and within it the processes of transitional justice.

We understand transitional justice as part of the liberal peacebuilding discourse – as a site of power production, domination, negotiation and rejection involving the collaboration of various actors, institutions and individuals. Our ambition is to bridge the ongoing discussion on transitional justice to a research agenda concerned with transformative approaches to peacebuilding. Such approaches seek to uncover and confront prevailing gendered hierarchies and encourage wider social change through changing the antagonistic relationships that were present prior to the conflict, or were shaped and consolidated during it, and which has become a hallmark of women's post-war experience. Our perspective is that of "transitional justice from below" and we attempt to re-imagine transitional justice as a transformative project towards a "gender-just peace" (Björkdahl 2012). A gender-just peace is understood not as

a reconstruction of the pre-war situation, but as a positive peace that provides for social justice and equity and that recognizes women's social and reproductive roles and women's agency. It is a peace that contributes to a fundamental shift in the provision of specific rights related to women's gender roles, a transformation of gender relations in society and redefinition of gendered hierarchies. Gendering agency is the starting point for this endeavor.

By gendering agency we access agents and spaces for agency that may be hidden, ignored or misrepresented in mainstream approaches to transitional justice and peacebuilding. We are not uncritically relying on concepts such as "women's experience" which may essentialize women and constitute women as a homogenous group. Nor do we constitute "local women" as "Others" i.e. passive victims in need of protection (Väyrynen 2010: 138). In this paper we conceptualize women's agency, locate the female agentive subject, and identify instances of critical, creative agency that challenge or negotiate patterns of gendered relations of domination. In this endeavour we challenge the assumption of equality of interest of agents, which is underpinned by the myth that men and women follow the same practices and that they are equally placed to shape these practices.

By focusing on gendered transitional justice gaps, we aim to disclose the restraints and enablements of women's agency, examine how women exercise creative, critical agency to further transformations towards a gender-just peace. We do this through specific observations of the post-conflict processes in Bosnia-Herzegovina. The peace that has been constructed through nearly two decades of extensive peacebuilding including transitional justice processes is fragile, externally driven and riven with contradictions and gendered inequalities. The Dayton Peace Accord did in fact "not diminish but reaffirmed the patriarchal nationalism as a dominant ideology and social system in post-war Bosnia" and established a peace that is far from gender just (Cockburn 2013: 127). In the post-Dayton setting, gender identities are being reconstructed, reconfigured, and redefined through an interaction between the liberal peacebuilding discourse with its transitional justice ambitions and nationalism, culture, and religion. The intimate link between gender and nation-building post-Dayton has produced a form of victimized and ethnicized femininity not conducive to efforts to build a gender-just peace. The post-conflict phase has meant a backlash for women, peace and women's rights activists strongly testify (Focus Group, Sarajevo Nov 2011). "We have seen a re-traditionalization of gender roles". The period of war and its aftermath

brought with it “exclusion of women from the public space, and also the hidden discrimination within families” as one prominent human rights advocate put it. Women in BiH have seen women agency circumscribed, their space to maneuver shrunken and their calls for peace and justice unheard.

The paper proceeds with a conceptual discussion on what it means to engender transitional justice and examines gendered justice gaps. From this follows a discussion and conceptualization of agency, which situates a critical and creative women agency in time and space. Then an empirical analysis of gendered transitional justice gaps in BiH follows focusing particularly on women agency, the presence of women and the spaces where women agency is exercised. The paper concludes with a final discussion of the implications of gendered justice gaps for the transformation towards a gender-just peace.

## **2. ENGENDERING TRANSITIONAL JUSTICE THROUGH ENHANCING AGENCY**

Transitional justice can no longer be understood as a “neutral” field preoccupied with jurisdiction, but rather as a platform for realigning power and legitimizing certain narratives, structures and actors (Moon 2008). A gendered reading of the transitional justice project raises critical questions concerning the quality of the peace one hopes to achieve in transitional societies. So far, mainstream transitional justice and peacebuilding practices have tended to re-entrench gendered hierarchies, ignore women, or limit their presence to being passive victims in need of protection. Despite an increased focus on mainstreaming gender in these processes, we have limited knowledge about the presence, participation and multifaceted practices of (critical) agency of women in doing justice and building peace. Women’s agency is often ignored, deemed without importance or misrepresented. Representations of female agency in post-conflict processes tend to obscure the subject and transform her into an object that is “allowed” to perform a scripted agency of being for example a “victim” (of sexual violence) or a “vessel” containing nationalistic pride or hurt. Critical scholars have since highlighted that the preoccupation with sexualized violence has had the by-effect of locking women into the role of passive victims, and has obscured other forms of gender-based violence against both men and women (Engle 2005; Campbell 2007; Beltz 2008; Manjoo and McRaith 2011).



## 2.1. MAPPING THE GENDERED PEACE AND JUSTICE GAPS

In the last decade scholars have started to unveil how the boundaries of transitional justice in plural ways exclude women's experiences and needs (e.g. Bell and O'Rourke 2007; Osterveld 2009). The legal standards, which are the foundation for transitional justice mechanisms, and the processes by which these mechanisms are designed, tend to be gender-biased. This is a consequence of the male domination of peace negotiations where contemporary transitional justice mechanisms often are set up as part and parcel of the peace accord that establish the new post-conflict order. However, the absence of women from these formal negotiations does not equate with the absence of women's demands for accountability, acknowledgement and reparation. This said, what exactly does it mean to add gender justice to the discussion about transitional justice mechanism.

### 2.1.1. ACCOUNTABILITY

As a core aspect of transitional justice, accountability mechanisms are set up in order to end impunity, increase security and change values through the prosecution of individual war criminals. Its central functions can be defined as *retribution*, *deterrence* and *expressivism* (Drumbl 2007). Through its retributive function accountability measures provide a formalized type of revenge, meting out punishment of criminal acts that have been committed by individuals. Its deterrent purpose is to discourage criminal behavior after war has ended and lessen the influence of war criminals. Its expressive function includes the moral imperative to put an end to cultures of impunity and show that such crimes will not be tolerated in the new post-conflict order where other values are to be (re)-established. In this sense accountability measures are bestowed a transformative, norm-generating role (Drumbl 2007: 73f; Teitel 2000).

Accountability mechanisms are set up in order to end impunity, increase security and change values through the prosecution of individual war criminals. The purportedly neutral and objective character of legal measures is undermined by inherently subjective demarcations of what constitutes a crime and who is regarded as a victim (Franke 2006). These lines have until recently excluded crimes concerning gender-based sexual violence. Important steps have been taken over the last decade to begin addressing this gap and a new legal framework that recognizes gender-based violence has developed, now permanently installed in the statutes of the International Criminal Court

(ICC).<sup>1</sup> While the legal framework is a central building block for narrowing the accountability gap, cultural values and norms mean that gender-based sexual violence continues to be marginalized or ignored. The lack of protection of female witnesses and lack of understanding of the often staggeringly great social prize women have to pay for witnessing have been pointed out as important obstacles. The few convictions worldwide concerning these crimes indicate that impunity is widespread and that the implementation of legal frameworks in domestic contexts is slow (O'Rourke and Bell 2007).

The overall presence of women in legal proceedings is low, and when they do testify, it is primarily in cases concerned with sexual violence. While gender-based sexual violence constitutes a large and destructive part of the harms suffered by women, they have also been the objects for other types of war crimes. The sole focus on women as victims of sexual violence reduces women's experiences of war and violence to only one aspect, meaning that women's plural experiences are largely missing from the legal history that is being written (Buckley-Zistel and Zolkos 2012: 2).

#### *2.1.2. ACKNOWLEDGEMENT*

Accountability mechanisms are complemented by tools for acknowledgement. They aim to provide a space for victims, clarify the events during conflict and detail the pattern of human rights abuses. In the long run it aims for reconciliation by providing space for plural accounts of the past, and laying to rest contentions over past events. While acknowledgement measures tend to stress the individual victim's experiences, its peacebuilding function is primarily concerned with the collective dimension. Central for this endeavor is the construction of a shared narrative of the past – as such acknowledgement can be defined as “what happens to knowledge when it becomes officially sanctioned or enters into the public discourse” (Cohen 2001: 224).

The most popular tool is the fairly recent phenomenon of truth commissions. Close readings of truth commissions have revealed that women's experiences and agency are excluded or marginalized. A highly gendered script has emerged from platforms such as truth commissions as the “asked-for” stories have to a large degree centered on men's narratives and muted women's experiences (e.g.

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<sup>1</sup> The Rome Statute of the ICC explicitly defines sexual and gender-based violence as crimes against humanity (article 7g) beyond the act of rape; war crimes (article 8.2xxii) and to a certain extent as genocide (article 6d).

Ross 2002; Coulter 2008; McDowell 2008: 337). Such gendered silences distort the historical record and entrench impunity (Ni Aoláin et al 2011: 184f).

Beyond the institutionalized acknowledgement processes of truth commissions, acknowledgement is sought through commemoration practices including museums and memorials remembrance days as well as public, discursive practices such as public apologies by leaders. Museums and memorials are becoming increasingly important ingredients in the transitional justice package and attract outside donors and policymakers (Hamber et al 2010) but the emergent focus on commemoration as part of transitional justice has so far hardly generated any studies of its gendered implications (McDowell 2008 is an exception). The materiality of museums and monuments is sometimes read as solid statements about the violent past, however it is increasingly recognized that they are highly charged sites where cultural values are (re)inscribed. Often centered on idealized masculinity, they enroll images of women in the service of a patriarchal, (ethno)nationalist post-conflict order. The image of “woman-as-victim” functions as a vessel of a nation’s pride as well as hurt (McDowell 2008: 337; Yuval-Davis 2008). In this process the multiple roles that women may perform in wartime are erased – as fighters, as peacemakers and as providers of security, food and shelter (Meintjes et al 2001).

### 2.1.3. REPARATIONS

The right of individuals to *reparation* for the violations of human rights in violent conflicts has been increasingly recognized in international law and it is also a growing theme of research (Rubio-Marín 2006; de Greiff 2006). Rubio-Marín and de Greiff (2007: 321) find that “reparations are best conceptualized as rights-based political projects aimed at giving victims due recognition and at enhancing civic trust both among citizens and between citizens and state institutions”. Reparations are thus rights-based claims and they may be the most “tangible manifestations of the efforts of the state to remedy the harms victims have suffered” (de Greiff ed 2006: 1-2). The connection between reparation, reconciliation, acknowledgement and healing is complex but undeniable and thus reparation delayed is healing retarded (Orr 2000).

The basic distinction in reparations programs is between material and symbolic benefits of either individual or a collective nature. Material reparations take different forms and shapes including for example individual financial compensation, restitution of material goods and access to services such as

education, health-care and other measures necessary for the rehabilitation of the victims. Symbolic reparations may include official apologies, change in names of public spaces, establishment of dates and places for commemoration. Reparations programs differ in scope (that is the total beneficiaries it covers), completeness (the categories the programs are able to cover), comprehensiveness (crimes and harms that lead to reparations), complexity (the diversity of benefits), internal and external integrity or coherence finality and munificence (de Greiff 2006) as well as transformative potential and openness (Rubio-Marín 2009: 12). Increasingly, reparations are understood to be not only a juridical question but also a political one. Reparations is a means to provide individual remedy to the victims of the rights infringed, but it is also recognizing victims as citizens and equal rights bears, as well as an act of assertion of these rights themselves, and an exercise of constructing and validating the legitimacy of the political order that respect and uphold such rights.

Reparations have of late received a lot of attention as a tool to re-adjust socio-economic consequences of war and thereby broaden the scope of transitional justice to also encompass long-term development (Couillard 2007; Rubio-Marín and De Greiff 2007; Bernstein and Seibel 2011). It requires attention to the social and economic dimension of violence, including the feminization of poverty that war often brings, and the potential of transitional justice to address it (Valji 2010). Reparations thus hold the promise to transform gender relations in society at large (O'Rourke 2008; Grina 2011). Yet, reparations programs have not been designed with an explicit gender dimension. Feminists continue to point out that war to peace transitions often fail to do justice to the victims of sexual based violence. The gendered nature of sexual violence and its continued social, psychological, economic impacts reinforce inequality beyond the peacebuilding processes. Thus programs for reparations for victims of sexual violence in conflict could figure as a special category in state reparations programs. However, gender bias construct normative and practical barriers prevent women to access the benefits of such reparations programs. Reparations programs, like many other transitional justice mechanisms for redress and recovery continue to be largely gender-blind. Thus, there are few reasons according to Rubio-Marín to believe that such programs will expedite and assist the achievements of the principal goals of reparation, including recognition, civic trust, and social solidarity between men and women, which is

intimately linked with building a just and peaceful foundation for a transitional society emerging from violent conflict (Rubio-Marín 2009).<sup>2</sup>

## 2.2. GENDERING AGENCY

Transformation calls for a deeper understanding of agency and the role that critical agentive subjects play for change. Agency as a concept is often referred to in critical peacebuilding literature, yet seldom theorized. In its most basic meaning, agency has to do with the human capacity to act; a capacity that is not exercised in a vacuum but in a social world in which structure shapes the opportunities and resources available in a constant interplay of practices and discourses (Giddens 1984, see also Cleaver 2007). The relationship between structures and agents is highly gendered, as our identities are performed and narrated through certain norms and practices that uphold gendered hierarchies, creating a “matrix of intelligibility” that circumscribes and prescribes what is a “liveable life” (Butler 1999: 24). The mapping of the peace and justice gaps above indicates how gendered practices enable or restrain what type of agency individuals can exercise; to what extent differently placed agents are able to exert influence and whether they partake in the endorsement and acceptance of unequal relations and structures; as well as how agentive subject’s narratives of intentions and desires are read and interpreted. By *gendering agency* we get access to an understanding of these dispositions.

### 2.2.1. CRITICAL AGENCY – REACTIVE AND ACTIVE

The exercise of agency involves mutuality and interdependence as well as relations of domination and subordination. The two are mutually implicated (Rao 2003; Shepherd 2012: 6). Within these relations multiple degrees of more or less reflexive agency is exercised. On one end of the spectrum, self-disciplining agents accept and even endorse relations of inequality as they enroll in projects of others and internalize hegemonic norms (Foucault 2000). At the other end of the spectrum, agents exercise their critical agency to challenge power relations, question existing norms and practices, challenge inequitable distribution of resources and claim and extend their rights.

In feminist research women’s agency has often been equated with intentional resistance (Ahearn 2001: 115) and the search for the critical agent within

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<sup>2</sup> One example is the reparations program recommended in the final report of the Truth, Reception and Reconciliation Commission in Timor Leste (CAVR) lists gender equity as one of five guiding principles that guides the reparations program (Rubio-Marín and de Greiff 2007)

critical peacebuilding research has mostly taken an interest in intentional acts of resistance. These contributions have been valuable in making visible agents “in the margins” (e.g. Richmond 2010). However, a sole focus on resistance limits our understanding of agentic critical subjects, as they move within an intricate web of embedded power relations. Their agency can “include everything from outright rebellions at one end, to ... a kind of complex and ambivalent acceptance of dominant categories and practices (Ortner 2006: 144). Hence there is a danger in defining agency only as a form of intentional resistance. We stress that agency should not only be understood as overt political action, but must also conceptually encompass what we do as we go about our daily lives making meaning, pursuing desires and intentions and our own “projects that infuse life with meaning and purpose” (ibid, 145).

From this follows that, while agency may be constrained and marginalized, there is no such thing as “absent agency.” It has bearings on how gendered agentic subjects not only have the capacity to react to structures of domination, but also to act and enroll in projects of their own, and how they both *react* and *act* in relation to socioculturally mediated structures. Such a reading of women’s agency resists the temptation of reducing agency to (western) ideas of the autonomous subject, thereby “(i)nscrib(ing) the desire for liberal agency into women of the “South,”” which may lead to the ignoring of women whose agency may be exercised in other spaces and in relation to a different set of dispositions (Auchter 2012: 128).

We hence use the term critical agency to encompass both active and reactive agency. It acknowledges agency’s reflexive and creative character, yet we neither understand agency as necessarily an individualistic project, nor solely as a project of resistance.

### 2.2.2. *SITUATING AGENCY*

The agentic subject is always situated. We therefore need to think more closely about the spaces in which women’s agency is exercised. Our interest in this paper lies in transitional justice “from below.” It means searching for women’s agency beyond organized (political) space, and listen to the “whispers in the margin” that may have transformative effects.

We do know that in post-conflict settings women agents are often active in informal spaces such as civil society, and less often take part in formal spaces for decision-making. The spaces where women perform agency are often

ignored, belittled or marginalized, hence women face double exclusions based on both a gendered bias as well as a bias against civil society (e.g. Meintjes et al 2001; Wanis-St. John and Kew 2008: 13). Critical questions must also be asked around how agency is restrained or enabled within these spaces, as informal as well as formal spaces are imbued with power relations and hierarchies that may mute people (Gaventa 2006; see also Mannergren Selimovic et al 2012).

An effect of this blindness is the shutting out of the “domestic sphere” as irrelevant for peacebuilding research. However the private-public divides are “ideological constructs” that delineate spaces and persons as well as activities in ways that shift over time. Further, an individual may be quite powerful in one realm and less powerful in another (Mosedale 2005: 251). We need to explore how restraints on women’s agency in the domestic sphere are upheld through norms of patriarchy and/or continuities of violence, and how these constraints travel to the public domain affecting the role women may play there. An analysis of gendered agency in peacebuilding and transitional justice must therefore transcend divides such as domestic/public and informal/formal, thereby making visible the micropolitics that many women engage in for addressing and coping with the deep contestations in “the ordinary” that shattering violence has inscribed (Das 2007). Such a reading opens up for an interest in the everyday “doing” that resonates with the understanding of agency as both active and reactive.

### *2.2.3. AGENCY IN TIME*

Temporality is an important aspect for understanding how women’s agency is played out over longer time, how gains may go backwards, how progress may be reversed and how windows of opportunity may open for women’s agency at unexpected moments. The space for women’s agency often expands during times of upheaval such as conflicts when embedded power structures shift and adapt to new demands (Yuval-Davis 2008: 171). As the case of BiH aptly illustrates, the closing of such windows may be abrupt during the aftermath. Patriarchal, nationalist and religious values and norms have established a far from gender-just peace with shrinking political space for women (Björkdahl 2012; Cockburn 2013: 127).

An analysis of agency in relation to gendered gaps of peace and justice must relate to the temporal aspect, as mechanisms of transitional justice are intimately linked to notions of development and the temporal move from war to peace through the implementation of certain measures for accountability,

acknowledgement and reparations. A gender analysis of how women's agency may actually shrink as peace proceeds opens our understanding for the fragile assumptions such projects rest upon, and how a lack of gender awareness may in effect create space for conservative backlashes, stripping women of agency and closing off spaces for informal agency.

Fundamentally, without an understanding of the temporality of agency it is hard to understand what restrains and enables transformation. Bringing in time as part of conceptualizing gendered agency makes it possible to approach the underlying objective of this paper, which is to further critical thinking on transformations towards gender-just peace.

We have here raised, and inevitably left unanswered, a number of questions about agency. When we now move to the empirical part of the paper, which analyses gendered peace and justice gaps in BiH, we will attempt to approach at least some of these queries.

### **3. GENDERED PEACE AND JUSTICE GAPS IN BiH**

During the 1992 – 1995 war BiH witnessed large scale violence and war crimes, ethnic cleansing and displacement, mass rapes, sexual torture, sexual slavery and other forms of sexual violence directed against women, men and children which resulted in an estimated 100.000 deaths, 2,2 millions refugees and internally displaced persons and 20,000 victims of rape and other forms of sexual violence. War survivors want to know the truth about the conflict, need to see that their experience of the war is acknowledged, and that the harms suffered is recognized. They need to see that justice is being done in order to build their lives in peace.

The BiH transitional justice process is slow and arduous, and constantly hampered by the ethno-nationalist centrifugal powers with little agreement on the past, present or future. The transitional justice is now moving from mostly being an external affair with the International Criminal Tribunal for Former Yugoslavia (ICTY) as its central mechanism to an internal domesticized process as The War Crimes Chamber of Bosnia's State Court is picking up speed and war crimes are also being processed at entity levels. The new National Strategy for War Crimes Processing aims to process all war crimes until 2023. It is complemented by the Transitional Justice Strategy, which is in



its draft stage and focuses on truth seeking, reparations and reform of institutions<sup>3</sup> (Impunity Watch 2012: 8).

Despite the fact that BiH has an institutional structure for gender mainstreaming most of the transitional justice programs are not gender-sensitive. The Gender Equality Agency and two entity-gender-centers have the potential to advance gender awareness and push towards a transformation of post-conflict BiH in a direction of increased gender equality. BiH was the first country in the region to adopt a National Action Plan for the Implementation of UNSCR 1325. In addition, BiH has adopted a Gender Action Plan (GAP) 2006-2010 and a five year financial mechanisms for its' implementation (FIGAP) (Impunity Watch 2012: 63). These programs aim to increase gender mainstreaming both in public and private spheres. Women have a strong presence in the Expert Working Group that drafted the Transitional Justice Strategy for BiH. Yet practical progress on these issues is still limited. Lack of political will is the common explanation for why transitional justice processes have not been made gender-sensitive.

Thus, the legal framework of Bosnia and Herzegovina has not addressed the issue of the gendered gaps concerning accountability, acknowledgement and reparation in an adequate manner. Public awareness and interest, as well as overall social status of the survivors of crimes related to sexual violence in conflict, is at a low level. The phenomenon of conflict related sexual violence is still perceived as a private matter, even though it is formally recognized as a public problem and a human rights issue. Despite the progress BiH has made in terms of advancing human rights and gender equality, the women survivors of conflict related sexual violence are still not sufficiently protected, and their rights guaranteed by the BiH laws are not fully respected. The high level of violence registered in the present day Bosnia and Herzegovina, which can to a certain extent be traced to the experience of violence during the conflict or its legacies, seem to manifest itself in increased and more severe cases of domestic violence enhancing women's sense of vulnerability and lack of rights (UN, 2012: 18).

A number of paradoxes come to the fore illustrating women's sense of injustice. First, the number of war crime cases that involve sexual violence that have been prosecuted are extremely low, while at the same time the fight of

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<sup>3</sup> There is also a state-level law on Missing Persons. Also in its draft stages is a programme of assistance for women victims of war rape, sexual violence and torture 2013-1016.

impunity remains a top priority. Second, the victims of conflict related sexual violence remain socially and economically marginalized, and there is no comprehensive reparations program to redress the human rights violations. Third, complicated legal framework, institutional complexity and the absence of rights for victims of wartime rape impeded access to care, while at the same time there is a great awareness that unhealed war traumas lead to deterioration of survivors wellbeing and health. Fourth, state service for victims of conflict related sexual violence has at large been absent and in the mean time women organizations have stepped in to assist the victims. Thus the gendered accountability gap, acknowledgement gap and reparations gap remain to a large extent, as do the patriarchal, religious and nationalist discourses that impeded efforts to address these gaps.

### **3.1. THE ACCOUNTABILITY GAP**

#### *3.1.1. GENDERED POLITICS OF ACCOUNTABILITY IN BiH*

The accountability process in BiH has to a large degree been defined by the ICTY, which began its proceedings in 1992 when war was still ongoing. The convictions for rape as a crime against humanity in the ICTY have been seminal for the development of international law, and some key individuals have been convicted for their crimes (ICTY 2001; 2007), Nevertheless, the general recognition of these crimes in BiH has overall been very low, partly because the ICTY's verdicts have been used by ethnonationalist entrepreneurs to entice divisionism and the tribunal's work is therefore read as inherently biased (Delpla 2007; Mannergren Selimovic 2010).

As the ICTY now moves to a close, the domestic legal system in BiH is taking over responsibility for the postwar accountability process through The War Crimes Chamber of Bosnia's State Court, as well as courts at the subnational entity levels. A gendered analysis of its work so far raises serious concerns. The domestic system has generated only a couple of convictions and a handful of ongoing trials and the legal framework is inconsistent with international standards and jurisprudence of international courts.<sup>4</sup> One such consistency concerns the whether the use or threat of force has to be present in order to prove that the act was not consensual.<sup>5</sup> Contrary to international jurisdiction, this is the case in Bosnian law (United Nations, 2012). The need to prove the

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<sup>4</sup> The complexity of the justice system in BiH means that two criminal codes are in use with sometimes contradictory approaches (Impunity Watch 2012: 41).

<sup>5</sup> Articles 172 and 173 in the Criminal Code of BiH.

use or threat of force lead to interrogations into the sexual conduct of the witnesses before and after the crime. As reported by the legal monitoring organization TRIAL, many women testified about “the tendency to interrogate the conduct of the victim in ways that are humiliating and legally irrelevant” (TRIAL 2012: 461). Henry’s words that we repeatedly ... “see the replication of denial, minimization, and disbelief where victims of wartime rape are concerned” without doubt ring true in the Bosnian context (Henry 2010: 1101). It is not rash to say that the international gains concerning the criminalization of conflict-related sexual violence are not gained permanently, but rather under constant negotiations, an important observation that should feed into analyses of relationships between the ICC and national jurisdictions.

Another aspect of the gendered accountability gap concerns the structural conditions for women’s participation in these trials. Prevailing insecurities partly due to the impunity of war crimes means that women take certain risks. Several witnesses have been threatened and programs for witness protection are either non-existent or very marginal. Witnesses have had to share waiting rooms at the courts with the accused and in some cases, their identities have been leaked despite guarantees of anonymity (TRIAL 2012). Another marginalizing factor is the vulnerable economic situation that many Bosnian women face. As witnesses are not reimbursed for their travels to court, and as the court system often fail to provide information about the right to claim for allowances, the economic burden may be yet another discouraging factor for women to take part in criminal proceedings (Impunity Watch 2012).

These types of justice processes can provide women not just with relief but also wounds. By coming forward to testify Bosnian girls and women bring social shame on themselves and their family. Whatever good that may come out of the ordeal is offset by the risks of being met with incredulity, being blamed for the rape or having their experiences trivialized (Hunt 2004: 177-179). The long-term consequences of being ostracized in their communities combined with on-going threats and feelings of insecurity may prove too overwhelming for many women (Focus Group Sarajevo November 2011).

### *3.1.2. RECOGNIZING FEMALE WITNESSES AS AGENTIVE SUBJECTS*

Despite these difficulties, Bosnian women and girls have taken on the challenge and exercised effective and multifaceted agency in criminal proceedings concerning BiH with tangible results. Their testimonies at the ICTY, coupled with women’s groups’ international advocacy campaigns and

the work of key individuals in the courts, have had lasting impact on a global scale. This agency continues today, but now in places far away from international spotlights as women victims sit in Bosnian courtrooms to face accused perpetrators. They are agents “from below” that step into the formal spaces of courts to exercise their agency, often in the face of economic and physical insecurity as well as cultural restraints. They often come to these trials on their own in defiance of the wishes of their families; many travel in secret, a few with support from women’s groups, others utterly alone (Focus group Sarajevo November 2011).

Given the high social prize that those women who do testify pay, one must ask what entices them to actually take part in these processes. Their choices to participate in accountability mechanisms and demand justice for crimes committed against them in the face of certain social repercussions, is an example of critical agency that we contend has often been misrepresented and misunderstood, as a consequence of narrow configurations of what women’s agency entails, coupled with a general disregard for the victim within criminal proceedings (Stover 2004).

The perpetuation of the stereotype of “woman-as-victim” has been an unfortunate effect of transitional justice’s preoccupation with women (solely) as victims of sexual violence (Campbell 2007). An added stereotype is the prevalent idea that women testify in criminal courts with the main focus to help their own very personal “healing” (Mertus 2000; 2004). While many victims no doubt seek personal closure by testifying in courts, such a frame is too narrow to encompass the multiple reasons for women to testify. We here want to highlight the court as a site for victims to exercise critical and creative agentive subjects, and address not only the perpetrators but also take on the challenge of the deep-seated patriarchal norms that is an on-going feature of their lived experiences of the post-conflict everyday.

In a rare report based on interviews with female witnesses in BiH, it is concluded that the respondents were not primarily focused on their own personal healing. The strongest reasons for giving testimony among them was “to make the perpetrator accountable for what he did and to see him punished, to prevent other women and girls from being raped, and to tell ‘what really happened’ (Medica Mondiale 2009: 52). They also wanted to act against impunity and increase security: “I decided to testify to protect our children... We had to testify in order to remove war criminals from the streets.” (ibid, 54).

Finally they wanted to contribute to far-reaching transformations of underlying societal values: “These person cannot be idols and role models to future generations. The only way to prevent this is to reveal the truth about them” (ibid, 55).

Through the construction of woman-as-victim, women’s critical agency in these proceedings has been narrowly interpreted in a way that may obscure and render her political work invisible. The constraints on women’s agency within criminal accountability mechanisms are numerous. In order to narrow the accountability gap these restraints need to be lifted. The fact that legal gains made in the international system have not fully travelled into the domestic system in BiH, is a further imperative to monitor how possibilities for agency may close in time as well as in space.

## **3.2. THE ACKNOWLEDGEMENT GAP**

### *3.2.1. GENDERED POLITICS OF ACKNOWLEDGEMENT IN BiH*

Post-conflict acknowledgement processes are driven by the desire for an inclusive narrative of the past. While the overarching goal may be to contribute to reconciliation, the struggle around what is to be remembered and what is to be forgotten is a highly contentious and gendered process whereby power relations are produced and maintained. In deeply fractured post-war BiH, claims for acknowledgement are interpreted as part of ethno-nationalist reconfigurations of the political. As a consequence, several attempts to organize a national truth commission have failed (Kritz 2002: 60f; Freeman 2004: 7f), political elites routinely protest any verdict by the ICTY that infringes on their own version of the truth (e.g. Mannergren Selimovic 2010, 2011) and commemorations are highly politicized as the different “sides” of the conflict celebrate their own “war heroes.” Suggestions by women peace organisations to create a “Victim’s Day” - a day when survivors would join across ethnic divides and together mourn innocent victims from all sides - have been vehemently turned down by political entrepreneurs on all sides (Focus Group, Sarajevo November 2011). Reconciliation projects are on-going as local projects but without any bearings on national and entity levels.

As the struggle continues over who was a victim and who was a perpetrator, the intertwined representations of gender and nation have distorted and rendered women and women’s experiences and agency invisible (Zarkov 2007). While the particular harms suffered by women in the Bosnian war – as rape

victims – have been turned into an internationally emblematic image of that war, these experiences have been silenced in the national and local context, only invoked in the abstract as a symbol of the nation’s collective hurt and suffering.

### *3.2.2. AGENCY FROM BELOW - RESISTING SILENCE*

However, despite these restraints, women have attempted to break these silences. A specific event in the Bosnian context serves to illustrate the writing out of women’s experiences, and how women “from below” exercised critical agency by attempting to challenge these blanks and demand acknowledgement of women’s experiences. In 2004 a group of women travelled together to the small town of Foca in Republika Srpska, during wartime the site of several rape camps. The crimes committed there have in detail been documented through the ICTY proceedings and the verdicts from these trials were seminal in stating that conflict related sexual violence may constitute a crime against humanity (ICTY 2001; 2007). Nevertheless, the rape camps and the crimes that were committed there are erased from the public discourse as well as from the physical space. The white “Partizan” building where women and girls were imprisoned is situated in the town centre. An anonymous building used for sports and cultural activities, nothing marks it as a site where crimes against humanity have been committed. Close-by, an impressive monument commemorates the fallen Bosnian Serb soldiers from the area<sup>6</sup>.

Some of the women who embarked on the bus journey to the town in 2004 had been held prisoners there and they had returned with the aim of putting up a commemoration plaque on the Partizan building. When the group of about ten women arrived to the site, they were turned away by police on the official grounds that they did not have a permit. Inhabitants congregated around them, throwing stones and shouting abuse (BBC News, 2004). Recalling the event some years later, one of the women who had been part of the protest commented: “They did not want us there... They were afraid, they just wanted us to disappear, to shut up.... But we only wanted to acknowledge the victims. We did not take anything from them. “ (Interview Sarajevo 2008).

The vehement reaction to this demand for inclusion in the official discourse has many layers. The women challenged the highly ethno-nationalist tale of victimhood among Bosnian Serbs. At the same time as they disrupted the image of the heroic soldier (commemorated only a few metres away), they

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<sup>6</sup> Mannergren Selimovic conducted fieldwork in Foca during 2008-2009.

unsettled stereotypes of the silent and passive female victim. The demand for physical recognition was an act that not only concerned the particular victims in the Foca camp, but also insisted on an overarching story of the war, its perpetrators and victims, of far greater complexity than the highly polarized narratives spun around the twin structures of nationalism and patriarchy. This was not only unsettling for the “other side” whom they openly challenged through their action - it may be noted that neither did they get any public support for their actions from their “own side” (Interview Sarajevo 2008).

### 3.2.3. *BREAKING THE SILENCE IN UNEXPECTED SITES*

The critical agency exercised by the former victims in Foca did not yield any direct results. Public silence still engulfs the specific rape camps in Foca. Nevertheless, the process of opening up “the story of war rape” at a more general level is slowly developing – but in sites that we normally do not think of as part of transitional justice. In BiH it has been foremost a process driven by actors within popular culture and a critical debate around the invisibility of the conflict-related violence has been expressed in fictionalized form.

The Bosnian film *Grbavica* (English title *Easma's Secret - Grbavica*) released in 2006 and directed by Jasmila Zbanic is about a rape victim who deals with post-war life in Sarajevo as a resourceful but struggling single mother. The role turns the nameless victim into a subject dealing with the on-going consequences of the crime and as the film also criticized and complicated the post-conflict state’s celebration of its heroes, it led to some public debate (Dogwoof Pictures, 2006). The recent international film production *In the Land of Blood and Honey* (directed by Angelina Jolie), which frames the topic of the rape camps with a love story across ethnic borders, sparked a lot of controversy, which in itself opened up a debate on the voice of rape victims, raising contentious questions around who could speak for them and who had the right to control their story (The Guardian, 2011).

This observation encourages further thinking of cultural engagements as a potentially fruitful and little explored aspect of transitional justice in a broad sense. Both these fictional accounts have complicated and challenged the narrow role for women in the post-conflict context. Clearly, we need to look beyond “acceptable or ‘appropriate’ victimhood for women” (Ni Aoláin et al 2011: 180) to identify expressions of critical agency that refute essentialist configurations of gender and nation. A deepened understanding of the

gendered dimension of ethno-nationalism is hence needed in order to grasp how acknowledgement processes can come to fully encompass women.

### **3.3. THE REPARATION GAP**

The gendered reparation gap that we notice in transitional justice programs conceived as redress for gross human rights abuse are caused by a gender bias inherent in many rights system (including human rights law). This gender gap is magnified by the absence of women in the design and implementation of reparations program, and the lack of engendered reparations are a cause of major concern as such reparations programs will inevitably reproduce gender biases, and compound gender hierarchies of post-conflict societies.

The right of individuals to reparations for gross human rights violations in violent conflicts is part of the shift in transitional justice from a focus on perpetrators to the needs of victims. Reparation also holds the promise of transformation of pre-existing order if individual rights are linked to a broader political project, such as engendering peace and justice of the post-conflict order. So far the engendering of transitional justice has for the most part had little impact on the design and implementation of reparation programs in BiH.

Given that women represent a large proportion of the victims of contemporary conflicts such as the one in BiH, and women experience conflicts in different ways, reparations programs need to be designed to redress women more fairly and efficiently while also seeking to subvert gender hierarchies that often antecede the conflict. When asked what their preferred type of compensation is victims of conflict-related sexual violence in BiH tend to answer that they prefer services that meet their and their families' basic needs over the restitution of lost property or monetary compensation.

#### *3.3.1. REPARATION PROGRAMS IN BIH*

The question of reparations for victims was neglected by the ICTY (Nollkaemper 2009: 204) and BiH does not have a comprehensive reparations program at the state-level to redress human rights that have been violated (Martin-Ortega 2012). As far as reparations-related legislation is concerned, the Law on Missing Persons, which regulates the right of civilian victims of war to compensation, is the only such law at the state-level. Entity level legislation<sup>7</sup>

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<sup>7</sup> In the Federation of BiH legislation regulates including Law on Principles of Social Protection, Protection of all Civilian Victims of War and Protection of Families with Children,



regulates war related benefits for veterans and civilian victims such as payments and disability pensions paid on basis of social and economic status (Impunity Watch 2012: 74).<sup>8</sup>

The draft of the Transitional Justice Strategy for BiH holds, in addition to gender provisions, two distinct approaches to reparations: A victims' centered approach through activities that consider recognition of victims' suffering, regaining of their dignity and re-socialisation through redress for past injustice; and a development approach for building capacity to provide services to victims, compensations and rehabilitation (psychosocial support, employment and organizing socio-cultural and sport activities). The drafting process has taken in the efforts of the CSOs in this field and suggests measures for institutionalization of their programs of reparations. Still, a comprehensive reparation program where all victims of sexual violence in conflict are eligible based on their rights being violated is lacking. In fact the victims of sexual violence in conflict are not recognized as such by any existing law. Progress is visible though. As the first post-conflict society BiH, however, provides rape victims with a monthly pension (Calypkan 2007: 54). In patriarchal societies this is a method preferred to a lump sum cash benefit as it is seen to enhance women's agency, and the money is more likely to be spent by the victim than by her relatives (Dugan and Jacobson 2009).

In many ways the distinction between compensation payments, veteran benefits and welfare payments are blurred. Most women are not aware of the difference between compensation for war crimes and welfare assistance, as the

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Law on the Rights of War Veterans and Their Family members. In Republika Srpska legislation include the Law on Protection of Civilian War Victims of Republika Srpska and the Law on the Rights of Veterans, Disabled War Veterans and Families of Soldiers fallen in the defensive and Fatherland War of Republika Srpska (Impunity Watch 2012: 49-50). The United Nations Population Fund (UNFPA) is currently working together with the BiH Ministry for Human Rights and Refugees on drafting a Program of Assistance to Women Victims of War Rape and Other forms of War Sexual Violence. The ambition is to develop a decentralized scheme forging cooperation between victims associations, centers for social welfare and mental health and cantonal/district/municipal courts and authorities in order to provide efficient and timely service and assistance to the victims (Conference report 2012; Impunity Watch 2012: 50).

<sup>8</sup> The government system for compensations to war victims in BiH is complex and the recipients are categorized into four categories: 1) disabled war veterans, (military payment) 2) payments to families of fallen or missing soldiers, (military payment) 3) payments to civilian victims, 4) payments to families whose members were killed or disappeared during the conflict. Out of 11.000 recipients of civilian payments only 621 were victims of sexual violence in Federation of BiH. In RS 3.843 persons were recipients of civilian payments (probably including victims of sexual violence in conflict but no specific category for this) compares with 69.451 persons receiving military payments.

link between war and poverty seems self-evident to most women. Women are thus constructed as poor and vulnerable victims that need assistance. Not as recipients of reparations to right a wrong. This of course means a devaluation of women's wartime experience and it diminishing their ability to exercise agency to shape their own post-war existence.

Reparation programs and policies in BiH are designed in the political sphere, a space few women have access to. Women are frequently more active in informal spaces but such spaces where women exercise their agency are often ignored in the processes of shaping reparations programs. However, by opening up a space for participation women can contribute to the design and implementation of reparations programs in order to make them better addressing women's needs and concerns i.e. making reparations gender-sensitive. Such a space may offer women a reparative sense of recognition both as victims and as valuable agents of political and social transformation (Rubio-Marín and De Greiff 2007: 324). So far, there is room for improvement at all levels of the complex governance system in BiH for such 'space-making' efforts.

### *3.3.2. THE GENDERED POLITICS OF REPARATIONS*

In BiH it is increasingly recognized that the right of reparations in the aftermath of gross human rights violations cannot merely be understood in juridical terms as it may have implication for gender-relations in post-Dayton Bosnia. "When reparations are thought of as part of a political project of (re)creating a more legitimate, democratic and inclusive political order, rather than of reverting to a broken past, they open a window of opportunity— even if small— for women to endorse forms of reparations that depart from settled practices and norms that are so frequently part of pre-existing hierarchies" Rubio-Marín and de Greiff (2007: 325) suggest.

Contrary to expectations, the issue of reparations has played a negative role in the reconciliation process in BiH. Particularly in terms of defining victims and beneficiaries of reparations, which is a major challenge in post-conflict societies where resources are scarce. First, determining the boundaries between victims and perpetrators is deeply contested and thereby identifying eligible claimants is highly political as the recognition of victimhood "is viewed as a micro negotiation about the nature and causality of the conflict" (Aolíne et al 2011). In BiH, several associations for camp inmates, relatives of missing persons and women subjected to sexual violence have thus been divided along

ethnic lines making it difficult to come together to advocate for state-level reparations programs. Second, reparations have divided victim and survivors within the ethnic communities. Due to the particular design of the reparations programs victims of sexual violence in conflict have unintentionally been pitched against camp survivors constructing a difference between ‘majority’ and ‘minority’ victims because of program (Simpson et al 2012: 137).

Reparations holds the potential to strengthen the social contract defined in the Dayton Peace Accords and support the transitions towards democracy by recognizing the victim citizens as “equal rights holders”. To some reparations can be seen as a means to utilize the (modest) transformative potential of remedy as it has “a capacity to subvert, instead of reinforce, pre-existing structural inequalities” (Rubio-Marín 2009: 17). This may be an important step in understanding the difference that gender could make when conceptualizing, designing and implementing reparations in BiH. The growing sense that sexual violence should be among the violations that deserve reparations is not all that is at stake and concerns with gender justice should be mainstreamed in the discussions about reparations. If the BiH reparation programs fail to recognize legal and other barriers to women, they reinforce rather than subvert inequalities.

Rubio-Marín (2009: 66) identifies three criteria for engendering reparations: 1) avoid formal gender discrimination in the design and implementation of such programs, 2) looking for ways to ensure that patriarchal norms and sexist standards and systems of values are not leaked into reparations, 3) optimize the transformative potential of reparation programs so they advance towards a society free from gender subordination. Encouraging such transformation also suggests viewing reparations as a means to give agency to women rather than as confirming the status of women victimhood. So far, BiH has not been able to develop comprehensive gender-sensitive reparations programs as patriarchal structures are firmly in place.

Women in BiH are quite active in movements for justice but they channel their engagement through human rights organizations and organizations of victims or families of victims and only more recently have they organized around gender-specific aspects of their victimization exercising agency to shape reparation programs. As a matter of fact, women have been particularly active in the filed of reparations. They drafted the Program for of Assistance to Women Victims of War Rape, Sexual Violence and Torture 2013-2016.

Furthermore, the development of the Programme for Improvement of the Status of Women Victims of Wartime Rape, Sexual Violence and Other Forms of Torture in BiH was designed through an inclusive and transparent process with consultations with local community and participation of key actors.

### *3.3.3. AGENCY AND THE TRANSFORMATIVE POWER OF REPARATIONS*

Women in BiH are not simply defined as victims entitled (or not) to reparations. They are agents within civil society – stepping in to perform reparations when governments fail to do. This was noted by one of the participants in a focus group in Sarajevo stating: “We never speak out about policies that the state is not willing to take up responsibility for, that is, policies to empower them both economically and socially. If you ask the victims and survivors of violence, what they need is housing ... and a job so that they can put bread on the table. But we do not fight for their social and economic problems, we can simply fight for their temporary sanctuary. We are just in a vicious circle. We are forcing the state to prosecute the perpetrators. But we do not force the state to provide the victims with housing and so on. And (the state) did not in the first place provide the foundations for them to no longer being victims at all.” (Mannergren Selimovic et al 2012: 97). Thus by asserting their presence in performing reparation programs women enhance their agency as shapers of transitional justice practices rather than as passive victims of war.

Medica Women’s Therapy Centre is an example of women performing reparations. Set up in 1993 to meet the needs of women raped in nationalist ethnic cleansing campaigns in Bosnia it was a women’s project based on international-local cooperation, although all staff were Bosnians themselves war survivors. Providing medical care, psychotherapy, trauma treatment, and various other approaches to healing while promoting gender awareness Medica was assisting also a small number of traumatized male victims (Cockburn 2013: 28). Post-conflict the needs of the women clients increasingly came to include also domestic violence, ‘everyday rape’, escape from prostitution and trafficking. Medica is now part of an international movement ‘women against violence against women’. Today, Medica is recognized by the local government, depend on state funding and it has opportunities to take part in policy development. Over time it has developed a strategic partnership with state services while at the same time challenging politicians lobbying for women’s rights and provisions (Cockburn 2013: 32). Many women’s NGOs in BiH function as service providers stepping in where reparations are lacking, delayed or insufficient.

Reparations, as we have seen, include a variety of measures that lend it self to an array of competing meanings. When examining reparations it becomes clear that it is not only about policies and programs but also about reparations practices and when it comes to practices, women are not only the beneficiaries, but equally important the performers of reparations. Beyond the questions of what types of reparations and for whom lurks the more specific question of how to imagine forms of redress that avoid reproducing gender hierarchies, meet the needs of women and that contribute to transform societies emerging from violent conflict towards a more equal, just and peaceful society. Taking women performing reparations in post-conflict societies where the state fails to shoulder its responsibility is one avenue to explore for designing gender sensitive reparations programs that better address the concerns of women.

#### **4. CONCLUSION – TOWARDS A GENDER-JUST PEACE**

The field of transitional justice has recently been enriched by a gender analysis, which in turn has contributed to problematizing the role of women in processes of doing justice and building peace. This paper adds to the project of ‘gendering’ transitional justice as it highlights women’s participation, presence and agency in these processes. We have paid particular attention to the set of gendered dispositions that exist within the transitional justice framework that may enable or constrain women agency. Though our analysis has been biased towards three particular areas of engagement of transitional justice; accountability, acknowledgement and reparations we have been able to think critically about the gendered hierarchies inherent in transitional justice processes more broadly and the analysis has revealed the creative and critical agency of women doing justice. From this we are able to distil a number of broad yet preliminary concluding thoughts. First, we conclude that women’s participation in transitional justice and peacebuilding processes is complex, multilayered and constrained yet creative, and we have been able to capture the ways in which women exercise agency in ‘the margins’, in ‘alternative’ or ‘hidden’ spaces as well as in the public, political space but there perhaps to a lesser degree. Second, to successfully address gendered transitional justice gaps, spaces for women to exercise agency must be established and women agency should not be neglected or diminished nor contained in the private sphere. Third, we also agree that transitional justice carries the potential to add to transformative peacebuilding and thus contribute to more gender equality in the post-conflict society, yet this potential is often untapped.

#### **4.1. AGENCY AND THE TRANSFORMATIVE POWER OF ACCOUNTABILITY, ACKNOWLEDGEMENT AND REPARATIONS**

Women engage with transitional justice mechanisms as both objects and subjects. By gendering agency we have been able to better map agency and access spaces for agency ignored by mainstream transitional justice. The gendered interplay between women agency and post-conflict and transitional justice structures has been approached through the conceptualization of agency in relation to the subject, to space and to time. The concept of *critical agency* pinpoints the agentive subject and the active and reactive ways that women exercise agency, including but not confined to resistance. It captures the broad political changes as well as the minute dealings in the “micropolitics” of gendered post-conflict life. *Situating agency* advances our understanding of the diverse and sometimes hidden spaces in which women’s agency is performed, it points to the need to identify critical agents beyond formal and informal structures, to search for the agents in the margins, and listen to the silent and silenced voices. Finally bringing in the *temporality of agency* makes visible the opening and closing of political possibilities, the friction over time between different actors when hegemonic relations are transformed. Thinking about agency in relation to time provides tools to understand the potential for transformations and shiftings of gendered hierarchies. This conceptualization of women agency and its interplay with transitional justice has provided us with an understanding of “transitional justice from below”, in which women participate in civil society organizations dealing with “women’s issues” such as rape, domestic violence, the disappearance of family members and beyond challenging and negotiating gendered patterns and practices of transitional justice tools.

#### **4.2. THE GENDERED POLITICS OF ACCOUNTABILITY, ACKNOWLEDGEMENT AND REPARATIONS**

By focusing on gendered transitional justice gaps we have been able to disclose transitional justice as a site for the long-term construction of the gendered post-conflict order. The gendered accountability, acknowledgement and reparations gaps that have been examined here seems to be a consequence of structural constraints for women to engage in shaping and implementing transitional justice. It is also suggested that these gaps have a strong impact on women’s sense of injustice and failure to realize the peace dividend. The analysis of these gaps in post-conflict BiH suggests that they emerge from a paired marginalization: the marginalization of victims within transitional justice and the marginalization of women within it. In addition, it seems that women

face double exclusions based on both gender bias in the transitional justice project as well as a bias against civil society, the space where women most frequently exercise their agency. Where as women have been known to be the pillars of civil society, demanding justice for their family members and put life together after the conflict, women's groups have not been particularly engaged in shaping transitional justice mechanisms. Furthermore, the gendered gaps produce a sense of injustice. Impunity of war crimes involving sexual violence persist, women's experiences risk being trivialized, witness protection is at best marginal, the social and economic costs of witnessing are not recognized. The harms suffered by women during the war and women's experience of war are not acknowledged in the metanarrative of the war. Instead BiH women as rape victims have come to symbolize the victimization of the Bosnian nation and it has become the emblematic symbol of the BiH war, reproducing women as victims without agency. Interestingly, the challenge against such deeply engrained stereotypes have come from popular culture, usually not encompassed by the transitional justice debate. Filmmakers have used fiction to force the issue of conflict related sexual violence into public discourse, and in this process disrupted "appropriate" images of female victimhood. Reparations programs are not designed to redress women or subvert gender hierarchies and victims of conflict-related sexual violence continue to be socially and economically marginalized as the state fail to provide sufficient reparations.

Furthermore, it seems as if these three gaps reinforce each other and exclusions in one area travels to the next - i.e. when women are written out of the new narrative of the post-conflict nation, it is hard for them to make claims for reparation, and when impunity for crimes against women in conflict is not addressed, women's suffering is not acknowledged. Thus we conclude that the gendered accountability gap, acknowledgement gap and reparations gap remain upheld by the patriarchal, religious and nationalist discourses that impeded transformation towards a more gender-just peace.

### **4.3. TOWARDS A GENDER-JUST PEACE**

A gender-just peace is peace and justice cognizant and inclusive of the gender. A critical gender approach to peace develops a positive epistemology of peace incorporating both gender critiques and gender-sensitivities in order to develop an understanding of alternative social and political ontologies of peace (and barriers to them). This approach offers a positive epistemology of an emancipatory peace with space for agents resting upon empathy and possibly

active care, and a concern with both institutions and everyday life. A post-Westphalian, emancipatory peace may arise through discourse gender equality. A gender-just peace is an aspirational vision associated with the idea of positive peace: a society that resolves the conflicts and contradictions within it in a constructive, just and inclusive fashion and which is thereby rendered resilient and relative resistant to mass or systemic violence. In this conceptualization of peace values such as inclusion or gender equality are an inherent and indissoluble part of peace. Building such peace then is a transformative process driven by creative, critical agents comprising, amongst other things, the promotion of women's rights and empowerment. At the same time, the broader processes of peacebuilding and transitional justice can also be used as a means of leveraging social transformation. This includes providing a space where women agency can exercised thus permitting women a more prominent place in post-conflict transformation processes. Furthermore, it may address issues of identity and the idea of "reconstructing masculinities" through security sector reform, demobilization, disarmament and reintegration while also promoting a human rights agenda as part of governance and rule of law reforms. In line with the notion of positive peace, a gender-just peace strive to eradicate the socially constructed differences between women and men through transforming institutions and structures that reproduce and sustain inequality and through empowerment processes that transform both gender and social relations, eventually creating greater equality and equity between women and men within and between social groups. In such ways, rights that are not transformative by themselves can be transformed as part of a larger transformative process.

While a gender analysis of transitional justice so far have led to fruitful insights, many gaps remain. The analysis of three gendered transitional justice gaps although limited demonstrate the persistence of the gendered hierarchies of transitional justice in BiH and evidently gendered justice gaps remain. As in many places, a more gender just-peace in BiH remains a distant goal. For example, we know little of the impact of such mechanisms as vetting, official policies of apology and the societal remembering and forgetting through remembrance practices. The new wave of reparations needs to be closely analyzed to understand how it affects women's agency and socioeconomic position. Violence in the public sphere is selected for accountability while violence committed in the private sphere is ignored; a bias which tends to exclude women's experience of the continuum of violence across conflict and post-conflict social and political orders (Franke 2006). This of course opens up



for a critique of the dichotomy ‘private’ and ‘public’ and ‘before’ and ‘after’ war violence (Hansen 2001). Selectivity of sexual crimes might have counterproductive effects for wider questions of gender justice and for obscuring women’s role as active agents. Interactions and friction between different transitional justice mechanisms as well as actors and stakeholders – international, national and local - within the same post-conflict context have hardly been studied; a lacuna of the liberal peacebuilding project at large that has urgently been pointed out in recent literature.

## 5. REFERENCES

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