Chapter 9
War Reparations in Bosnia and Herzegovina: Individual Stories and Collective Interests

Frederiek de Vlaming and Kate Clark

Introduction

Bosnian war victims and groups of victims have taken different paths to seek redress for harm they suffered as a result of the 1991–1995 war. The Dayton Peace Accords of 1995 established two reparations mechanisms: the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) and the Human Rights Chamber (HRC). The CRPC oversaw an administrative restitution scheme that allowed war victims to claim repossession of their lost properties. The HRC could order Bosnian authorities to take measures providing compensation or other forms of assistance to victims of human rights violations. The two institutions received and administered thousands of individual applications. The Dayton reparation mechanisms ceased to operate in 2003. Since then, Bosnia no longer has a national war reparation program for war victims. Thousands of victims, both in and outside Bosnia, have filed applications with domestic courts. Up to this day, most of these claims have been unsuccessful.

Transitional justice literature distinguishes between micro- and macro-level mechanisms of war reparations. At the micro-level, it is the individual victim (or a group of victims) who files a claim before a court against another individual, i.e. an alleged perpetrator, or against an institution, with the aims of establishing the facts that lead to the particular harm done to them, and of identifying or exposing those responsible for it. Such claims are typically initiated by the victims themselves, either individually

F. de Vlaming (✉)
International Criminal Law Department, Amsterdam Center for International law, Faculty of Law, University of Amsterdam, Oudemanhuispoort 4–6, 1012 CN, Amsterdam, The Netherlands
e-mail: F.deVlaming@uva.nl

Center for War Reparations, Nuhanovic Foundation, Amsterdam, The Netherlands

K. Clark
Royal Conservatory of The Hague, Nuhanovic Foundation, Pythagorasstraat 31, 1098 EW, Amsterdam, The Netherlands
e-mail: kateclarkonline@gmail.com

D. Zarkov, M. Glasius (eds.), *Narratives of Justice In and Out of the Courtroom,* Springer Series in Transitional Justice 8, DOI 10.1007/978-3-319-04057-8_9,

or as a self-appointed group, or by their legal representatives. In this procedure, the victim occupies the central place, raising a claim on his or her own behalf, in order to gain proper recognition of the harm and suffering endured, and possibly also other forms of reparation. Reparation claims can be made either through a civil (tort) case or on the basis of criminal proceedings. The latter are run by the prosecutor and reparations may be awarded after the defendant's liability has been established.

Macro-level or administrative mechanisms, on the other hand, are designed to enable a large group or specific category of victims to bring claims directly to national or local authorities (as opposed to through the courts). The claims are administered through the application of some existing or specially created law. These mechanisms are aimed at securing collective solutions. They are typically initiated at the governmental level and they imply prima facie recognition of the existence of a large group of victims whose needs must be addressed. Here, it is not the suffering of individuals that is the driving force, but the recognition that a large body of victims has been created by the conflict and that their needs can be, to some extent at least, addressed by the systematic application of some reparatory mechanism. We will refer to these as administrative or collective claims mechanisms.

The two levels are sometimes portrayed as antagonistic to each other, in other cases as complementary. As we will discuss in this chapter, it is generally argued that collective claims mechanisms are a better instrument to provide redress to war victims: These mechanisms may potentially reach out to large numbers of victims, recognize victims as a special group in society, can serve to reflect on the responsibility and liability of authorities and better represent the collective dynamics of war crimes. By contrast, individual litigation is often seen as serving the interests of only one or a few victims and thus failing to represent adequately the collective nature of mass violence.

This chapter proceeds with a discussion of the multiple aims of reparations mechanisms. Central to the discussion are the observations of Pablo de Greiff, long-time specialist in the field and since 2012 United Nations (UN) Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence. The chapter then looks at how both individual and collective mechanisms have worked in practice during and in the aftermath of the Bosnian war. Our central question is to what extent the neat and potentially antagonistic divide between individual and collective claims mechanisms, as conceptualised in transitional justice literature, exists in the Bosnian context. How strict is or was the division between the two mechanisms? Do individual proceedings indeed only serve individual interests and represent the individual's narrative? And, to what extent do collective mechanisms focus only on the collective aspects of harm and disregard individual interests?

We will argue that both the individual and the group claims for reparations made by Bosnian victims have ultimately always served interests broader than the claims themselves. Firstly, they have helped establish historical truths and determine the responsibility of individual actors as well as institutions. Secondly, they have bolstered a growing demand for leaders to be held to account. Finally, they have contributed to the further development of the international body of law on reparations.

Concepts of War Reparations: The Individual vs. The Collective[1]

Answering the basic—but all encompassing—question of 'what should [war] victims in fairness receive?', de Greiff suggests three notions that should be at the heart of any reparation program: recognition, civic trust and solidarity (de Greiff 2006, p. 452, 454, 455, 459).[2] Recognition can be understood as the aim of a reparation program to depict victims both as individuals and as citizens. De Greiff argues that 'Citizenship is a condition that rests upon the equality of rights of those who enjoy such status. And this equality of rights determines that those whose rights have been violated deserve special treatment, treatment that tends towards the reestablishment of the conditions of equality' (de Greiff 2006, p. 460, 461). Thus, firstly, recognition entails acknowledgment of the (historical) facts and the harm suffered by the victims, and the appreciation of the victim as a bearer of rights. Secondly, reparation is aimed at restoring civic trust among citizens as it 'involves an expectation of a shared normative commitment' (ibid., p. 462). Civic trust is thus understood both as trust towards others—including government and other authorities—and as trust in the national legal or normative system (ibid., p. 463). Finally, solidarity—understood as 'having an interest in the interests of others'—should be at the heart of any reparation policy (ibid., p. 464).

By presenting these three aims of post-war reparation programs, de Greiff positions the issue of reparation in the context of a wider post-war reconstruction program. Reparation programs should, according to de Greiff, be developed 'in relation to a broader political agenda' and 'have a political perspective' (ibid., pp. 454–456). The collective dynamics of war violence and the state's involvement therein should be reflected in a collective, state-driven and administrative reparation model that reaches out to victims as a particular group of citizens in society. According to Teitel, the consequences of this approach imply that not just any form of harm suffered by any individual can be repaired (Teitel 2000, p. 134). She argues that reparation should 'transcend[s] the affected individuals and reach [. . .] the wider society' (Teitel 2000, p. 134). Thus, where a state has involved itself in persecution and discrimination and failed to provide for equal protection among its citizens, it should, in Teitel's words, 'advance reconstruction of equal citizenship rights' (Teitel 2000, p. 134). In the case of massive abuse, and here we return to de Greiff, 'an interest of justice calls for more than the attempt to redress the particular harms suffered by particular individuals. Whatever criterion of justice is defended must be one that has an eye also on the preconditions of reconstructing the rule of law, an aim that has a public, collective dimension.'[3]

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[1] War reparations may have different forms: compensation, restitution, rehabilitation, satisfaction and guarantees of non-recurrence. See Teitel (2000, p. 119).

[2] See also Teitel on the same question but in slightly different wording: 'Of all the wrongs committed under past repressive rule, which inequalities merit redress?' (Teitel 2000, p. 134).

[3] De Greiff (2006, p. 457). See also Malamud-Goti and Grosman (2006, p. 551: 'reparation programs restore the dignity of the victims and allows for reintegration into society as equal citizens'). See also Segovia (2006, p. 655: 'programs of reparations are essentially political in nature' and 'are part of a

The question then is whether this interpretation of the aims of war reparation schemes leaves room for any form of individual claim for harm that is suffered in a collective context. Transitional justice literature advances a number of principled and pragmatic arguments that preclude individual recourse to the courts. First, achieving justice for only one or a limited number of victims would discriminate against those who suffered the same harm but are not able to initiate litigation due to a lack of awareness or resources. Second, as de Greiff and Malamud-Goti and Grosman argue, the legal system is simply not equipped to deal with massive and systematic forms of violence; thus, litigation, whether individual or on behalf of a group of victims, is bound to impose an unsustainable burden. Third, a traditionally complex and lengthy, as well as antagonistic, legal procedure may not be sensitive to the particular position of traumatized war victims (Malamud-Goti and Grosman 2006, pp. 541–543). Moreover, the impartiality of the legal system may be doubtful: Judges may have been appointed by the former government and thus be prejudiced against victims (Malamud-Goti and Grosman 2006, p. 543). Other legal obstacles that are mentioned concern evidential requirements, such as the statute of limitations and the identification of perpetrators (Malamud-Goti and Grosman 2006, pp. 544–545). De Greiff criticises the focus on financial compensation as victims may have other needs, such as the wish to bring out and share their experiences (de Greiff 2006, p. 459). Incidentally, de Greiff warns that in the individual 'traditional tort approach', it may be impossible to quantify the harm that was suffered. Thus, a legal interpretation of 'adequate compensation' or 'restitution', as foreseen by international standards on war reparation, may lead to unrealistic outcomes and, on the other hand, 'pernicious' demands that defendants are unable to fulfil (de Greiff 2006, pp. 455–456; Malamud-Goti and Grosman 2006, p. 541).

Although administrative or collective programs may appear to be the most logical response after mass violence, they have shortfalls too. There is the potential for political manipulation of such mechanisms, for example, when they aim at silencing victims, a phenomenon that we have seen in a number of South American countries after military rule. There may also be problems in the area of implementation and enforcement of administrative reparation programs. As observed by Abazovic (in press) that even the best-intended post-war collective programs to mitigate the war's consequences may be rendered ineffective when the root causes of the conflict still prevail (Abazovic in press).

In such cases, the individual legal path is an option that can complement or even replace administrative schemes (Malamud-Goti and Grosman 2006, p. 557; Hamber 2006, p. 565). But even then, it is argued in transitional justice literature, legal proceedings should aim at transcending the individual level and contextualise the individual's harm in order to fully represent the collective dynamics of the crimes,

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more general human rights agenda'). See Teitel (2000, p. 137, 146) and Chap. 4, where she argues that reparation should be a 'social response to persecution', and 'a means to prospective political and economic transformation'. Teitel refers to the Latin American experiences where reparations were meant as a 'public apology', and where reparations drew a 'line on past wrongdoing' (Teitel 2000, p. 137).

thus satisfying and serving the interests of a wider circle of victims (Malamud-Goti and Grosman 2006, pp. 552–553).

In the following sections of this chapter, we will examine a number of cases outside and inside Bosnia, in order to reflect on the debate about the relationship between individual and collective reparation claims.

Individual Reparation Claims Outside Bosnia

Since 1993, a limited number of Bosnian war victims have sought redress before US and European courts. Generally, these claimants had fled Bosnia, and foreign courts provided the only forum in which to file their claims. Victims filed civil claims against individual perpetrators in the hope of obtaining public recognition and reparations. The civil cases were initiated by smaller or larger groups of victims, some of them being represented by victims' organizations or human rights organizations. These cases were directed at individuals and in one case against a government and governmental agencies. Criminal cases are normally initiated by state prosecutors but in a number of cases, this was done on the victims' requests.

Claims Filed Before US Courts

In 1993, while ethnic cleansing was still raging in the region, a group of Bosnian rape victims filed a claim in the USA under the Alien Tort Claims Act and Torture Victims Protection Act against Radovan Karadzic, political leader of the Bosnian Serbs and one of the RS's former presidents. The claimants alleged that Karadzic had been responsible for ordering war crimes, crimes against humanity and genocide in the form of brutal sexual violations and other forms of torture and extreme cruelty. The claimants approached Professor Catherine MacKinnon of Michigan Law School to represent them in seeking redress through international justice (MacKinnon 1998). MacKinnon explained the rationale for ultimately pursuing their claim through a national court as follows: 'Their first priority was to stop the genocide. [. . .] Second, the clients wanted to hold those responsible, from the top to the bottom of the hierarchy, accountable to them for what they had done.' In particular, 'the clients were not attracted to a confidential investigation by an international inquiry leading to a secret report in which perpetrators were told they did something bad' (ibid., p. 1). Moreover,

> [i]nternational bodies were not set up to achieve either of these goals. Briefly put, the applicable international law was strong in principle but weak on delivery. Domestic law in many countries had the reverse problem. It was often short on principle by international standards but long on teeth. We concluded that if you want a statement of principle, go to an international forum; if you want delivery, go to a national court. (ibid., p 1)

MacKinnon's clients wanted 'to testify about their rapes in a court of law' (ibid., p. 3). The claim was 'a civil claim, seeking declaratory relief (acknowledgment that what happened to them violated these laws), an injunction against the genocide (requiring Karadzic to order it to end), and substantial damages for the human atrocities committed as a result of his policy of genocidal aggression' (ibid., p. 2). MacKinnon's clients listed their first three goals in the following order: '(1) stopping the violations; (2) naming them what they are; (3) accountability to the violated for what was done to them' (ibid., p. 3). Plainly, alongside immediate cessation, public recognition of the harm done to them and public exposure (of at least one) of those responsible were primary goals for these survivors. MacKinnon observed that:

> [a] forum in which survivors choose their own lawyer, shape their own claims, and direct their own case leaves the process of justice substantially in their own hands. The process, by design, is accountable to them—not to the press, not to international politics, not to the bureaucratic imperatives of international organizations, not to the fundraising competitions or turf battles or empire-building of human rights organizations, and not to criminal prosecutors enhancing their careers by claiming to represent 'the law'. The ICTY is not accountable to survivors by design or in practice. Survivors have no decisive voice in it. (ibid., p. 3)

She added in her conclusion that 'the legal system has a lot to learn from the survivors' choice of a process they control themselves' (ibid., p. 4).

The claimants' fourth goal was 'continuity between the legal changes made and other law, so that what was done here counts and has meaning beyond the context of these proceedings' (ibid., p. 3). Indeed, they amended their initial claim, moving

> to certify a class of plaintiffs consisting of: all people who suffered injury as a result of rape, genocide, summary execution, arbitrary detention, disappearance, torture or other cruel, inhuman or degrading treatment inflicted by Bosnian-Serb Forces under the command and control of defendant between April 1992 and the present.[4]

The court granted this amendment.[5]

It is obvious that this landmark claim aimed, on the micro-level, at recognition, exposure and reparation, and on the macro-level at cessation of the violations in Bosnia, acknowledgement of the existence of a great collective of victims and an enduring legal impact for the benefit of others beyond the context of this claim. The court of appeals found that 'Karadzic may be found liable for genocide, war crimes and crimes against humanity in his private capacity and for other violations in his capacity as a state actor, and that he is not immune from service of process'.[6] On that basis, the jury decided to award US$ 745 million (US$ 265 million compensatory damages and US$ 480 million punitive damages) in favour of 14 plaintiffs.[7]

In December 1998, a lawsuit was filed before a US court by four Bosnian Muslim plaintiffs seeking compensatory and punitive damages against Nikola Vuckovic, a Bosnian Serb soldier during the course of the armed conflict in the former

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[4] Order—US District Court, S. Dist. of New York Order regarding class status in the matter of Jane Doe I v. Karadzic Opinion And Order 93 Civ. 0878 Para. 2.

[5] Order—US District Court, S. Dist. of New York Order regarding class status in the matter of Jane Doe I v. Karadzic Opinion And Order 93 Civ. 0878 Para. 4.

[6] Kadić v. Karadžić, 70 F.3d 232, 238–46 (2d Cir. 1995).

[7] Kadić v. Karadžić, No. 93 Civ. 1163, judgment (S.D.N.Y. August 16, 2000).

Yugoslavia (Mehinovic et al. 1998, p. 1). The principal plaintiff, Kemal Mehinovic, and the defendant were both residing in the USA at the time of the claim. Vuckovic was allegedly responsible for the arbitrary detention, torture and abuse of Bosnian Muslims and Croats from the municipality of Bosanski Samac, Bosnia and Herzegovina (BiH), and the forced relocation of Bosnian Muslim and Croat families living in the municipality (Mehinovic et al. 1998, p. 7). The applicants accused Vukovic of torturing them and committing gruesome atrocities against them during their arbitrary detention (Mehinovic et al. 1998, p. 3). In its judgement, almost 11 years later, the court relied on the testimony of expert witnesses and on International Criminal Tribunal for the former Yugoslavia (ICTY) findings on ethnic cleansing campaigns in Bosnia at the relevant period as ample evidence of the fact that the alleged crime was part of a larger criminal scheme (Mehinovic et al. 2009, p. 3, fn 2).[8] It awarded the plaintiffs US$ 10 million each in compensatory damages and US$ 25 million each in punitive damages (Mehinovic et al. 2009, p. 7).

After the conclusion of the trial, plaintiff Mehinovic expressed satisfaction at the outcome, saying:

> I am satisfied. I brought this case because I feel an obligation towards those who were killed or suffered extreme cruelty because of acts Vukovic committed or in which he participated. I survived. I have an obligation to tell their stories and to seek justice on their behalf. It is important that the public knows what happened, that they know what our lives were like before all of this happened, and that they know that we did nothing, nothing at all, to provoke these acts.[9]

Sandra Coliver from the Centre for Justice and Accountability which represented the plaintiff stated:

> Justice has been served because the victims had their day in court, and Mr. Vukovic has been forced to flee his current home in the Atlanta area [. . .] to live as a fugitive, unless he decides to accept responsibility for his crimes. [. . .] If he manages to re-enter the United States, we will work to have him arrested [. . .] and deported. [. . .] The case sends the message that the U.S. will not be a safe haven for torturers and war criminals. (ibid., p. 2)

Referring to the Bosnian Human Rights claims that had been brought under the Alien Torts Act in the USA, Hoffman, Coliver and Green (Professor Green represented plaintiff Mehinovic) have argued that this type of litigation 'contributes to the worldwide movement against impunity' by, among other things, 'holding individual perpetrators accountable for human rights abuses; providing the victims with some sense of official acknowledgment and reparation and contributing to the development of international human rights law'. Green and co-authors considered that '[. . . it] appears that these cases, when taken together with other anti-impunity efforts around the world, are also helping to create a climate of deterrence and [to] catalyze efforts in several countries to prosecute their own human rights abusers' (Coliver et al. 2005. pp. 174–175).

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[8] On the ambiguous role of expert witnessing and on the legal and political relevance of recognition of larger criminal scheme, see Doris Buss and Predrag Dojcinovicin, respectively, in this volume.

[9] Centre for Justice and Accountability, 'Dramatic Testimony on Closing Day of Bosnian Torture trial', Press release, 24 October 2001, p. 1. Available at: http://cja.org/downloads/Mehinovic_PR_10.24.01.pdf.

Finally, for the individual plaintiff:

> [t]hese cases often help survivors experience a sense of justice, a sense of meaning in their survival, and tremendous satisfaction in knowing that they have brought dignity to the memories of those who were killed or tortured. The cases are a way of setting the historical record straight—not just about what happened but also about who was responsible. As such, the cases can serve as a kind of mini-truth commission. (ibid., p. 180)

Beyond a sense of victory for themselves individually, the testimonies of these claimants and their legal representatives speak unequivocally of the great significance that their successful claims were intended to have, and did have, for the collective of victims and survivors.

Claims Filed Before National Courts in Europe

A number of other Bosnian victims have been awarded reparations in successful civil claims or following criminal convictions in European countries. The first Bosnian reparation claim ever brought before a European court was filed in France in 2005. Here the *Tribunal de Grande Instance de Paris* found sufficient evidence that former Bosnian Serb political leaders Radovan Karadzic and Biljana Plavsic were personally responsible for the harm suffered by the claimants, Zuhra and Adil Kovac, during the Bosnian war (Irwin 2011). The Kovac family had fled to France and obtained French citizenship after being attacked in, and deported from the eastern Bosnian town of Foca in 1992. In what one commentator has called an 'unprecedented civil decision' (Riley 2011) the French court ordered Karadzic and Plavsic to pay € 200,000 to compensate the claimants and their children for the pain, humiliation and loss they suffered as well as for the costs they incurred from Adil's injuries which resulted in disability. The family's legal representative, Ivan Jurasinovic, remarked that the court's ruling had 'pave[d] the way for victims of war crimes to obtain civil compensation from war criminals without a criminal trial'.[10] His clients expressed a sense of victory even while they acknowledged the possibility that actual reparation payments may never result from the decision, saying: 'This will not erase all the suffering, but for us it is a great victory' ('*Ca ne rattrapera jamais les souffrances vécues, mais c'est une grande victoire pour nous*'; ibid.).

In Norway in 2008, a former member of the Croatian Armed Forces, Mirsad Repak, was indicted for war crimes and crimes against humanity.[11] In the months from May to October of 1992, the defendant had been stationed as a guard in the Dretelj detention camp in BiH imprisoning Serb and Muslim civilians. He was alleged to have been involved in the arrest and unlawful detention of many civilian

[10] Ivan Jurasinvic, paraphrasing his interview with the newspaper 'Liberation' on 15 March 2011. Available at: http://avocats.fr/space/ivan.jurasinovic/content/-liberation–a-propos-de-l-affaire-kovac-c–karadzic_EBAA973D-FC18–4027-9E9A-EA589D94FE90.

[11] *The Public Prosecuting Authority vs Mirsad Repak*, Oslo District Court case no: 08-018985MED-OTIR/08, 2 December 2008.

non-combatants and to have continued their detention in conditions calculated to cause suffering and sometimes involving torture. In 1993, he fled to Norway with his family, subsequently obtaining Norwegian citizenship, and settling there (ibid., p. 3). The District Court of Oslo found Repak guilty of war crimes. The case gave rise to difficult questions concerning the relationship between Norway's domestic provisions on war crimes (which dated only from 2005) and those existing in international law particularly under the Geneva Conventions. The original decision of the District Court of Oslo was overturned by the court of appeal in early 2010, the higher court finding that the defendant's acts predated the existence of the relevant legislation in Norway and that retroactive application of new legal provisions was not permissible.[12] However, later the same year, the appeal court ruling was itself overturned in Norway's Supreme Court: Repak's conduct in depriving non-combatant civilians of their liberty and condoning their continued detention, which involved suffering and in some cases torture, was contrary to the law as laid down in the Norway's penal code of 1902. It was also contrary to the international legal prohibition against the detention of protected persons during armed conflict, under the Geneva Conventions to which Norway had long been a signatory.[13] Repak was sentenced initially to 5 and later to 8 years' imprisonment for illegal deprivation of liberty and detention of civilians and ordered to pay damages ranging from approximately € 4,000–12,000 to the Bosnian Serb victims.[14]

The case against Repak was the first of its kind in Norway. It demonstrates how judicial reasoning succeeded in weaving together domestic and international legal provisions that came into being at different times but were nonetheless aimed at protecting the same interests. Moreover, the extensive investigations that led to the indictment were done by the Norwegian prosecutor in cooperation with the Serbian war crimes prosecutor, and they involved the statements of at least 211 former detainees of the Detelj camp,[15] almost all the prisoners who were detained in the camp at the time.[16] The above points taken together show once again that the criminal prosecution of individual war crimes perpetrators can bring benefits to more than the small group of witnesses/victims involved in the case: They can help facilitate the intermeshing of national and international law to achieve broader jurisdiction over war criminals, and such cooperation between national and foreign prosecutors signals that crossing a border may no longer be enough to save a war criminal from prosecution.

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[12] Borgarting Lagmannsretten (Court of Appeal) Judgement 12 April 2010. See case summary at International Red Cross database on Humanitarian Law available at: http://www.icrc.org/customary-ihl/eng/docs/v2_cou_no_rule99.

[13] Norges Domstoler (Supreme Court of Norway) Judgement, case no. 2010/934, 3 December 2010. Summary available at: Norges domstoler > The Supreme Court of Norway > Summary of Recent Supreme Court Decisions.

[14] Oslo District Court Judgement (fn 5) at pp. 287–295. The sentence was raised by the Supreme Court.

[15] Republic of Serbia, Office of the War Crimes Prosecutor, Press Release, 17 April 2011.

[16] Oslo District Court Judgement (fn 5) at pp. 15.

In 2008, the district court in Stockholm found another Dretelj camp commander, Ahmet Makitan, guilty of having participated in the abuse of 21 Serb civilian prisoners and sentenced him to 5 years in prison.[17] The case similarly involved intensive cross-border cooperation, between the Swedish National War Crimes Commission, authorities in the region of former Yugoslavia and the ICTY in The Hague. The defendant, a former Bosnian Croat, who in the meantime had become a Swedish citizen, was arrested in 2010, 9 years after having settled in Sweden with his family. The indictment was partly based on the statements of 30 former camp prisoners. He was ordered to pay Krona 1.5 million (approximately € 170,000) as compensation to victims.[18]

The most recent European judgement in a Bosnian case was made in The Netherlands. Relatives of four Bosnian Muslim men who were killed in Srebrenica in 1995, sought to have the Dutch state found liable for the Dutch military's conduct on the UN compound that led to the death of the four. Their claim was confirmed by the Dutch Supreme Court in September 2013, 11 years after the start of the civil law proceedings. The main aim of the case was to establish the facts and the extent of responsibility of the Dutch state in situations where it acted on behalf of or in cooperation with the UN.[19] Commenting on the Supreme Court's decision, the claimants' lawyer stated that:

> The main victory is the facts that have been established, [...] that victims were expelled from the United Nations premises, that the Dutch military should have known and actually knew that [the three Bosniak men] would face certain death if they were to be expelled, and that Dutch government intervened in the United Nations command structure—these are all factual determinations that cannot be affected by any appeal in the future.[20]

The relatives of the victims—some of whom have become Dutch citizens—did not request reparation of pecuniary or non-pecuniary damages, though it is expected that the Dutch government will make an offer in this direction. Instead, the claimants stressed two important effects of the decision. First, they commented that the Supreme Court's decision had restored their trust in the Dutch government. 'I am proud of the Netherlands again', said one of the relatives of one of the killed Muslims shortly after the Supreme Court's decision was made public.[21] Second, the court confirmed what, in the claimants' eyes, had been the truth since 1995, namely that autonomous decisions made by the Dutch authorities had led to the death of their relatives. 'I feel we heard the truth today', said another relative briefly after been informed about the Supreme Court's decision (Simons 2013).

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[17] Stockholms Tingsrätt (Stockholm District Court), case no. B 382-10, 8 April 2011.

[18] International Review of the Red Cross, Volume 93, Number 883, September 2011, English language summary, available at: http://www.icrc.org/eng/assets/files/review/2011/irrc-883-reports-documents.pdf.

[19] For political discourses within The Netherlands on Dutch state's and Dutchbat responsibility regarding Srebrenica, see Erna Rijsdijk in this volume.

[20] IWPR Report News, International Justice, 'Lawyer Claims Dutch-bat Chiefs May Face Trial', Issue 700, 8 July 2011.

[21] Radio 1 Broad Casting Netherlands, 6 September 2013.

Without exception, the US and European cases mentioned earlier represented a legal novelty. For the first time, war victims took steps to use the law as a tool for seeking recognition for their harm and the consequences thereof. The cases expose an active engagement of victims with the proceedings, even in the criminal proceedings where the victims acted as witnesses. Both the civil cases (seeking reparations) and the criminal cases aimed at the establishment of the responsibility of individuals or state agents. The cases received a lot of publicity through national and international media. The criminal cases, in particular the Swedish ones, also reveal a new and intensifying form of cooperation between national authorities and ICTY to investigate and prosecute Bosnian crimes.

Claims Before Serbian Courts

Bosnian war victims filed lawsuits against the Serbian government for the conduct of its military functionaries. Generally, cases were not initiated by the victims themselves, as they feared repercussions and also because of the costs involved. Human rights organisations such as the Humanitarian Law Centre (HLC) in Belgrade acted on behalf of the victims.[22] For the HLC, this was part of its overall strategy towards achieving the 'public acknowledgment of victims [that] constitutes the prerequisite for reconciliation in the region of the former Yugoslavia'.[23] Since the war, it has been the HLC's aim to 'support post-Yugoslav societies in the promotion of the rule of law, and the acceptance of the legacy of mass human rights violations and, therefore, in establishing the criminal responsibility of the perpetrators, serving justice and preventing recurrence.'[24] In particular, its efforts focus on acceptance in Serbia of Serbia's role in the conflict,[25] as may be seen from its many publications focusing on Serbia then and now.[26]

Among the HLC-supported cases were the claims submitted in 2007 and 2008 on behalf of 20 former prisoners of detention camps in Serbia. They belonged to a group of about 1,500 Bosnians who in 1992 had fled from Zepa to Serbia hoping to reach a third country from there. Instead, they were captured by the Yugoslav army and detained, tortured and robbed of their belongings by members of the Serbian Ministry of Interiors (MUP). In the majority of the Serb court cases that subsequently

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[22] Humanitarian Law Center, 'Material Reparations for Human Rights Violations Committed in the Past: Court practice in the Republic of Serbia', (2012, p. 6).

[23] http://www.zarekom.org/RECOM-Initiative-Voice/RECOM-Initiative-Voice-15–2013.en.html.

[24] Humanitarian Law Centre, Mission Statement available at http://www.hlc-rdc.org/?page_id=14390&lang=de.

[25] See the chapters of Eric Gordy and Vladimir Petrovic in this volume on the dynamics of and debates about Serbian responsibilities for war crimes in Bosnia.

[26] Humanitarian Law Center, see publications listed under 'Public Information Outreach'.

ensued, the victims had requested an amicable settlement before filing a complaint but all of these were rejected (or simply ignored) by the attorney general.[27]

In 2011, the HLC also requested the Serbian war crimes prosecutor's office to prosecute 52 members of the Serbian MUP for war crimes committed against the Bosnian inmates. When the prosecutor declined the request, the HLC filed a complaint to the Serbian Constitutional Court. The organization requested the court to order investigations and the payments by the government of 234 million dinars in damages to the victims.[28] It was in January 2013, that a Belgrade court for the first time awarded one of the victims from Zepa with € 5,000 compensation (Ristic 2013).

The Serbian HLC positions its litigation work on behalf of war victims in the broad context of reconciliation in the region. The organization states that:

> The massive and systematic nature of the genocide and other crimes committed in the name of the Serbian people in Bosnia and Herzegovina was unparalleled in the wars during the nineteen-nineties on the territory of the former Yugoslavia. The victims of these crimes and their families have been waiting for 18 years for a genuine recognition of what they have suffered by the present and future generations of Serbian society. All of the Serbian institutions concerned need now to prove that they have accepted dealing with the past as a civilizational obligation. The criminal prosecution of a much greater number of perpetrators of crimes, the provision of material and nonmaterial satisfaction for the victims, the introduction of the comprehensive truth about the crimes in the former Yugoslavia into the history books and support for the RECOM Initiative [a regional truth and reconciliation project], are only some of the steps that would make institutions in Serbia an honest actor in reconciliation throughout the region.[29]

In these Serbian cases, as well the Dutch cases, victims had first sought to obtain an out-of-court settlement with the authorities. They turned to the court only after these efforts failed. In Serbia, the Bosnian war victims requested Serbian authorities to recognize them as civilian war victims and grant them such status so that they could benefit from the state welfare system and obtain pension rights. The government declined their requests and the victims brought civil proceedings before the Belgrade Municipal Court to obtain compensation for the harm they suffered during the war.[30]

In all litigation cases, individual stories were contextualised both by the claimants and the courts and presented as parts of large-scale violence and collective suffering. Most cases aimed at establishing both the historical facts and the responsibility of authorities in order to obtain reparations for a larger group of victims. In doing so, the victims hoped to achieve structural solutions or at least solutions that would benefit other members of their group.

With respect to the US cases, the applicants—as individuals and groups—explicitly aimed at further developing jurisprudence regarding the status of victims of sexual crimes. Not all applicants expressed explicit broader goals as did the Bosnian rape victims in the USA or the Bosnian claimants in The Netherlands (at least not to the knowledge of the authors). However, it is possible to draw conclusions about

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[27] Humanitarian Law Center Report: 'Material Reparations', p. 12.

[28] Humanitarian Law Center, Press Release, 11 April 2013.

[29] Humanitarian Law Center, Press Release, 26 April 2013.

[30] Humanitarian Law Center, Letter to the Prime Minister Ivica Dacic, 18 July 2013.

the potential broader benefits that flowed from their success at court. It is certainly evident that the claims predominantly aimed towards the first of the de Greiff pillars—recognition.

On the issue of the restoration of trust in the legal system, it is conceded that de Greiff was referring to restoration of trust *in the legal system of the state where the crimes took place* as the being most valuable kind of trust, because it contributes to the perception that the rule of law has returned and this tends to foster social stability. By comparison, a successful claim against Vukovic in the USA, Repak in Norway or against Plavsic in France would not have the equivalent value. Nevertheless, one can argue that the public condemnation that is implied by a conviction (especially where this led to imprisonment as well as compensation—see the Repak and Makitan cases) are indicators that the misconduct of perpetrators, in particular political and military leaders, is condemned by other actors in the international community. It shows also that where there is no hope of turning (successfully) to the courts of the state where the crimes took place; other avenues may still be open.

Reparation Claims in Bosnia

International Reparation Schemes: Serving the Collective

Inside Bosnia, it was the international community that established a system to provide redress for large numbers of war victims. As noted earlier, the Dayton Peace Accords of 1995 introduced two reparations mechanisms in Bosnia. War victims could file claims for restitution and reparations with two internationally administered institutions. The first one was the CRPC that received individual claims for repossession of lost properties of refugees and displaced. The program's aim was to enable more than 2.2 million Bosnian refugees and displaced to return to their homes. The second mechanism involved the HRC, a supranational court of last resort that could order local authorities to provide for reparations to victims of human rights violations.

The Dayton Peace Accords' main aim was to allow the return of the refugees and displaced persons and to re-establish the multi-ethnic country Bosnia once was. The restitution of property program was the international community's main asset in achieving these aims. To illustrate, Annex. 7 of the Accords 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.* (italics added)[31].

Land and house owners submitted their case with the commission and made a claim for restitution, compensation or a confirmation of ownership or legal possession

[31] The General Framework Agreement, Annex. 7, Agreement on Refugees and Displaced Persons, Art. 1.1.

(Buyse 2008, p. 280; Ferstman and Rosenberg 2009, p. 501). The CRCP's decisions were final and binding (Buyse 2008, p. 280). The commission could 'determine property ownership, and [. . .] value the property for the purpose of awarding compensation' (Ferstman and Rosenberg 2009, p. 501). In the end, however, the commission only decided about the lawful ownership of houses, apartments and business facilities (ibid., p. 505). Compensation of lost property was never awarded to claimants. The commission had not established a compensation fund, despite being formally mandated to do so, because the international community feared that compensation—instead of restitution—would hamper returns and thus the 're-creation of a multi-ethnic Bosnia' (Buyse 2008, p. 280; Rosand 2000, pp. 130–131; see also Ferstman and Rosenberg 2009, pp. 505–506: 'fears that affording compensation in the immediate aftermath of the conflict would simply exacerbate and entrench ethnic cleansing'; von Carlowitz 2005, p. 550). Claimants who would have opted for compensation had to claim housing restitution and subsequently sell or lease their housing to obtain de facto compensation (Buyse 2008, p. 280; von Carlowitz 2005, pp. 613–614).

In order to be able to handle the numerous individual claims, the commission developed procedures and policies 'to address particular categories or types of claims' (Ferstman and Rosenberg 2009, p. 505). There were, for example, different types of ownership, ranging from real property to 'socially owned property' of former employees who had enjoyed 'occupancy rights', implying a 'quasi-ownership right' before the war (ibid., p. 507). The commission solved a number of structural problems resulting from illegal property transfers during the ethnic cleansing campaigns (ibid., p. 507). For example, the commission decided to 'disregard all wartime sales [. . .] on the basis of the assumption that all such contracts were made under duress' (ibid., p. 508). In order to be able to decide about individual claims, the commission put in place new land registration and renewed property records that had been destroyed during the war. The commission collected and digitized cadastral data and established a cadastral database covering a large part of the country (ibid., p. 504).

The CRPC received 240,000 claims concerning 320,000 properties during its 8 years of existence and decided upon almost 312,000 of the claimed properties (Buyse 2008, p. 279).[32] According to United Nations Development Programme (UNDP), 93% of 200,000 properties had been returned to prewar owners by 2004. To some, the process was thus considered completed and successful.[33] Others, however, observed that the fact that the commission was able to make decisions in such high percentage of applications did not imply that *all* actual owners had returned. Many displaced persons appeared to have sold or exchanged their property and had chosen to stay where they had found refuge. The program had done little to remove the obstacles to return, such as discrimination of, and violence against the displaced who sought to return (Williams 2006, p. 10, 11; see also Ballard 2010, p. 495). The conclusion was thus made that the program had not 'fostered the type of mass-return foreseen by the drafters of Annex. 7 of the Dayton [Accords]' (Ferstman and Rosenberg 2009,

[32] CRPC, *End of Mandate Report* (1996-2003), 2004, p. 17

[33] UNDP Access to Justice, 2009–2011, year of publication unknown, p. 8.

p. 510–511).[34] It had not reversed ethnic cleansing (Ballard 2010, p. 476). Moreover, the program had excluded a number of groups, such as the Roma minority, who did not own property before or during the war.

However, the critique seems mainly to touch upon the way the international community had formulated and presented the restitution program, i.e. as an instrument to achieve political results rather than a rights-based project. The international community's later efforts to distance itself from the 'politicized approach' and to formulate the program in terms of the rule of law was seen as a positive development. Buyse (2008) observes that this shift from a return-oriented approach towards a rule-of-law-oriented approach to reparations indicated a new policy that was based on individual choice as the leading principle (Buyse 2008, p. 358). Whether a political or a rights-based project, the restitution program was an expression of the international community's recognition of one of the most serious problems resulting from the ethnic cleansing campaigns, the massive expropriation and displacement of a huge part of the Bosnian population. In the end, a large number of war victims, benefitted from this collective scheme.

The HRC was also part of the peace plan of the Dayton Accords, and as such constituted one of the 'institution-building activities' in the fields of 'democratisation, the rule of law and human rights' (Nowak 2005, p. 246). Its aim was to convey 'a feeling that victims of human rights violations were entitled to a judicial remedy before an independent court which went beyond the mere establishment of the facts and the respective violation' (Nowak 2005, p. 246).

The HRC received applications from individual victims or legal entities, such as religious organizations, concerning all alleged human rights violations by the state of BiH, the Bosniac-Croat Federation of BiH and the RS. Applications could also be lodged by one entity against another. The HRC's most important limitation was that it had no competence to receive applications that concerned human rights violations that had taken place during the war. The Chamber's mandate started only after the entry into force of the Dayton Peace Accords. A number of complaints, however, were closely linked to crimes that were committed during the war, such as disappearances, discrimination and expropriation.

The HRC had the power 'to order adequate reparation to the victims of human rights violations' (Nowak 2005, p. 246, 247). It could request the state or the entities in question to take specified steps to remedy human rights breaches 'including orders to cease and desist, monetary relief (including pecuniary and non-pecuniary injuries) and provisional measures' (Art. Xl, (1) Annex. 6 of the Dayton Peace Agreement). Pecuniary damages could cover losses of property and other legally protected interests, such as income (Yeager 2004, p. 46). The HRC could also order payments even without the claiming party having asked for it (Nowak 2005, p. 257). More structural measures that had to be taken by the respondent party could involve legislative action or overturning pieces of legislation. The HRC could also order a domestic court or police to take action (Cornell and Salisbury 2001–2002, p. 399).

[34] Williams, 'Post Conflict Restitution and Refugee Return', p. 10.

The Chamber's decisions were final and binding which implied that its orders were 'intended not just to redress the situation of the applicant, but also to prevent other similar violations from occurring' (Yeager 2004, p. 46). The HRC informed the international community about its decisions and orders and relied on the international community for their enforcement: 'Chamber decisions on the merits are forwarded to the Organization for Security and Co-operation in Europe (OSCE) and the Office of the High Representative (OHR) for monitoring of compliance'.[35]

Between 1996 and 2003, the Chamber received more than 15,000 applications of which 6,243 were resolved in 2,619 decisions (Nowak 2005, p. 247; Yeager 2004, p. 46, 47). The majority of the cases taken up by the HRC concerned real property issues. Denial of access to prewar homes and other instances of obstruction of refugee returns were the most common violation of human rights (Nowak 2005, p. 262, 278). The Chamber also dealt with, among others, wartime death penalties, discrimination, violations of the freedom of religion, disappearances and fair trial issues.

The HRC made both individual and collective decisions. It also could order the Bosnian authorities to change or withdraw legislation or policies. If the HRC decided the application admissible, it could, make a decision on the merits of the case or decide to 'strike out' the application from the list. This meant that a decision already had been made on a similar case, and the applicants were thus referred to the measures the Chamber has decided upon to be taken by the responsible authorities.

Generally, priority was given to cases that involved serious and systematic violations and cases that would serve as an 'important precedent for establishing the rule of law in BiH' (Yeager 2004, p. 47, 48). In most individual cases, the Bosnian Serb authorities—and in one case the federation—were ordered to carry out investigations, to bring the perpetrators to justice and, in the case of disappearances, to inform the relatives of the disappeared about the fate of the disappeared. HRC decisions often included an order to guarantee non-repetition (Nowak 2005, p. 254, 285). In death penalty cases, the HRC ordered the lifting of the sentence and the general abolishment of the death penalty. In illegal arrest cases, the HRC established the violations and awarded victims pecuniary and non-pecuniary damages.

A special collective measure was ordered in a case filed by 49 relatives of victims of disappearances in Srebrenica. The HRC requested the RS authorities to undertake a collective compensation measure, i.e. to pay 4 million KM to the Foundation of the Srebrenica-Potocari memorial and cemetery to cover the costs of the burial of and memorial for the victims (Nowak 2005, p. 255). It was the highest amount that was awarded by the Chamber (Nowak 2005, p. 284). No separate reparation measures were ordered to benefit individual claimants or assist in individual cases. In subsequent cases, the RS authorities were ordered to pay additional payments to the Foundation as well as to the Institute of Missing Persons (Ferstman and Rosenberg 2009, p. 495).

Notwithstanding the huge amount awarded to them, the applicants were not satisfied with the HRC's decision *only* to order a collective measure. They considered this to be an inadequate response to the genocide and the suffering of the individual

[35] Human Rights Chamber's official website, http://www.hrc.ba/ENGLISH/DEFAULT.HTM.

applicants and because it gave insufficient consideration to the victims' social and economic needs (Nowak 2005, p. 255). The victims were disappointed by the HRC's decision to 'strike out' all other applications concerning the crimes in Srebrenica. This decision implied that the Chamber would no longer deal with the outstanding 1,800 individual applications related to the Srebrenica disappearances as it had already addressed the issue (Ferstman and Rosenberg 2009, p. 495). 'It's all politics', commented one of the victims' representatives who had wanted the HRC to handle each case individually (Nettlefield 2010, p. 124).

The two international institutions—the CRPC and the HRC—are considered 'quasi-judicial' administrative bodies in that they acted upon individual claims and made individual rulings but their decisions also affected groups of victims and involved structural changes such as ordering legislation and policymaking (Ferstman and Rosenberg 2009, p. 502). Similarly, with its collective and 'strike out' decisions, the HRC sought to force authorities to come up with collective solutions and to reach larger groups of victims. In particular, the CRPC in that sense 'bore greater resemblance to a mass arbitration or claims process than to a judicial process' (ibid., p. 502). It was also the commission's ultimate aim to provide for a consistent pattern of decision-making and to contribute to new domestic legislation that would satisfactorily deal with property and return issues (ibid., p. 513).

Both mechanisms stopped operating at the beginning of 2004. In the next section, we will discuss what options were left for war victims who were seeking to obtain reparations after that date.

From the Dayton Mechanisms to the Bosnian National Courts

Present-day Bosnia has no formal reparation scheme or policy for war victims. It has 'a complex array of on-going payments to people who suffered war-related personal harms' (Popic and Panjeta 2010, p. 4). Payments are regulated separately by the two entities, i.e. the federation and the RS. The only state law on compensation is the Law on Missing Persons; but so far, it has remained a dead letter.[36] The entity programs support war veterans and demobilized soldiers and their families as well as civilian war victims and their families, but under such strict conditions that these cannot be categorised as war reparation programs sensu stricto. Rather, the schemes are considered as welfare and veteran benefits (Sostaric 2012, p. 50, 51). Civilian claims can be made on the basis of a minimum of 60% physical disability as a result of the war, while veterans require a disability of 20–40%. Payments to civilian victims' relatives depend on the family's income (Popic and Panjeta 2010, p. 7). Moreover, the applications are subject to statutes of limitations. There are a number of differences between the two entities. In the RS, for example, victims of sexual abuse also have to prove 60% bodily disability, while in the federation, they are not

[36] This law foresees in the right to health care, social protection and property. See also Popic and Panjeta (2010, p. 6); Sostaric (2012, p. 49, 54, 57).

required to do so and payments are not subject to income restrictions (Popic and Panjeta 2010, p. 17; Sostaric 2012, p. 53). In practice, however, neither entity has awarded any compensation to sexual abuse victims.

Alongside these government schemes, the Bosnian court system has received claims from thousands of war victims who started proceedings through the Bosnian court system to obtain reparations. To illustrate the differences between the international mechanisms and the Bosnian courts' handling of these claims, we will focus on two cases. First, we will describe a case filed by the Islamic Community (IC), essentially a class action that sought the RS authorities' approval to rebuild 15 mosques in the capital Banja Luka. Second, we will briefly describe the claims made by individual former camp detainees to be compensated for physical and mental harm they suffered in the detention camps.

More than half of the 1,144 Bosnian mosques and numerous other Muslim sites were destroyed during the ethnic cleansing campaigns. After the war, the destruction of the remains of the mosques continued and the sites were turned into car parks or waste disposals. In some instances, Serb Orthodox churches were built on the locations. The IC requested the RS authorities to rebuild the mosques in Banja Luka and other RS cities. RS authorities objected, arguing that the IC was not entitled by any right pertaining to the sites in question because, though it had been the owner of the mosques, it was not the owner 'of the real estate on which these mosques were built'—the sites of the mosques 'had become public property' (Nowak 2005, p. 257–259). The IC then filed an application with the HRC in which it requested, among other things, that the RS authorities reconstruct the 15 Mosques and 'enable Muslims in Banja Luka free expression of religion in previous places of worship, to provide temporary premises for Muslim worship in Banja Luka until the mosques had been rebuilt, to refrain from further destruction of the remains of the mosques [and] to refrain from any action to change the purpose of the sites of the destroyed mosques [. . .]'.[37]

The Chamber considered the RS refusals a violation of freedom of religion and the right to property and ordered the RS authorities 'to take immediate steps to allow [the Islamic Community] to erect enclosures around the sites of the 15 destroyed mosques [. . .], to refrain from the construction of buildings [. . .] on the sites of the 15 destroyed mosques [. . .], and to swiftly grant the IC the necessary permits for reconstruction of seven mosques at the location where they had previously existed.'[38]

The RS authorities did not follow the HRC's orders, and the IC took its case to the RS court of first instance, known as the Basic Court, in Banja Luka. By this time, it was year 2000 and this was the first such trial ever to take place in Bosnia. In addition to the above claims, the IC sought reparation for damages (material compensation) and the prosecution of the persons responsible for the demolition of the mosques. The IC regretted the necessity of seeking justice through the courts. It would have

[37] Decision on the Admissibility and Merits, delivered on 11 June 1999, case no. CH/96/29, The Islamic Community in Bosnia and Herzegovina against The Republika Srpska, Para. 3.

[38] Decision on the Admissibility and Merits, delivered on 11 June 1999 paragraph 212; See also Nowak (2005, p. 258-259).

preferred to continue negotiating its demands with the government because, as a spokesman said, 'we did not want to increase tensions'.

The Basic Court approved the IC's requests and ordered the RS government to pay 65.7 million KM to the IC. The RS appealed the decision and in November 2009, the verdict was overturned by the district court in Banja Luka on purely formal grounds because the suit had been filed too late.[39] Interestingly, the IC concluded that the decision was not entirely negative as it implicitly confirmed both the facts and the RS's responsibility 'for having failed to prevent the damage'. Therefore, for the IC the verdict was 'of historic significance'.[40] In February 2012, the RS Supreme Court confirmed the ruling of the district court in Banja Luka, but acknowledged that the responsibility of the RS and the city of Banja Luka, 'was not in question'.[41] In the summer of 2013, the BiH Constitutional Court, that is superior to the entity courts, made a final ruling. It reasoned that the statute of limitations upon which the district court in Banja Luka had relied, was not applicable to war crimes and awarded US$ 42 million to the IC to rebuild the mosques.

Among the victims who requested the Bosnian authorities for compensation, but ended up bringing their claims before Bosnian courts, are many of the 200,000 former detention camp inmates.[42] They had originally asked for compensation from the federation and the RS government authorities on the basis of the entity laws for veterans and disabled war victims but soon discovered that these laws did not recognize them as actual war victims (Šoštarić 2012, p. 52, 55).[43] Thousands of former detainees then filed their claims through the courts, mostly in the RS and against the RS authorities (Šoštarić 2012, p. 53).[44] However, the RS state attorney and the minister of justice rejected these legal claims on the grounds that they deemed themselves incompetent to deal with military (sic) matters. The claims were also rejected because of a strictly applied statute of limitations. With respect to the latter ground, the former detainees had been unable to submit documents proving their status as former detainees and their medical situation in time (Sostaric 2012, p. 52).[45]

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[39] Erna Mackic, 'Historic Decisions by Banja Luka Court', Balkan Investigative Reporting Network (BIRN), 13 Nov 2009.

[40] Mackic, 'Historic Decisions'.

[41] 'RS must pay compensation for mosque destruction', Daily News, PISE Oslobodenje PORTAL 26.11.2012.

[42] TRIAL, 'Accessing Justice: Improving the situation of victims of international crimes in Bosnia and Herzegovina and Croatia', (2013, p. 6).

[43] UNDP, 'Access to justice, Facing the Past and Building Confidence for the Future (2009–2011)', p. 10–12; Selma Boracic, 'Bosnia War Victims' Compensation Struggle' (International War and Peace Reporting (IWPR) 3 August.2011.

[44] Sostaric reports on more than 20,000 of such lawsuits against the RS and more than 500 against the Federation. See also UNDP, 'Transitional Justices Guidebook for Bosnia and Herzegovina,' (2009, p. 44), mentioning the Association of Concentration Camp Detainees BiH filing 16,000 lawsuits during 2007 and 2008, predominantly against RS.

[45] TRIAL, 'Freed, but not free yet! The situation of former camp detainees in Bosnia and Herzegovina', report to the Special Rapporteur on Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment and the Working group on Arbitrary Detention (2012, p. 41, 43).

In November 2011, the Supreme Court of the federation overruled this decision, reasoning that the statute of limitations was not applicable to the claims by the former detainees for non-pecuniary compensation.[46]

Interestingly, the former detainees' principal objective to go to court was to inform the public of the existence of the detention camps and to establish the responsibility of both entities for their confinement. Furthermore, the victims wanted to achieve recognition in order be able to regulate the status of the entire group of victims (Sostaric 2012, p. 67).[47] 'The human aspect is far more important than the financial. Victims get moral satisfaction when their suffering is recognized by the authorities. Without that, there will be no reconciliation and coexistence in BiH', said a representative of the Association of Concentration Camp Prisoners RS that filed 536 cases at the municipal court in Sarajevo.[48] For the former detainees, litigation was above all a means of establishing a 'collective truth' and an instrument to compel authorities to formally acknowledge their suffering and to force them to come up with a 'proper solution' (Sostaric 2012, p. 67, 69).[49] Ultimately, compensation was only awarded in a very limited number of cases and varied, arbitrarily, from a few euros to hundreds of euros for each day in detention (Dzidic 2012).[50] However, the sums were never actually paid.

As we have also seen in Serbia, the former detainees from Bosnia first tried to reach a collective settlement with Bosnian authorities. When negotiations failed, they started legal proceedings at Bosnian courts. Both the mosque and the former detainees' cases sought to serve the interests of a particular group in society, as a group, not just as individual victims. The victims aimed at obtaining public and governmental recognition of what had happened during the war and acknowledgement of the suffering of their own victims' group.

Conclusions

Since the war in Bosnia (1992–1995), individual victims and groups of victims have claimed reparations for harm they suffered during the war. Reparations were offered through collective schemes or hard won by individual victims before domestic and foreign courts, international bodies and national authorities. Analysing the

[46] TRIAL, 'Freed, but not free yet!', p. 47.

[47] UNDP, 'Transitional Justices Guidebook,' p. 45.

[48] Boracic, 'Bosnia War Victims' Compensation Struggle'.

[49] Boracic, 'Bosnia War Victims' Compensation Struggle'. Sostaric observes that, unlike former camp inmates, relatives of disappeared persons and victims of sexual abuse 'focus on individual truth-finding'.

[50] Boracic, 'Bosnia War Victims' Compensation Struggle,'; BIRN Justice report, 'Prison Camp Detainees to Sue Bosnian Serbs' 8 February 2013; Dzidic (2012) tells the story of one former detainee who received € 4 for each day of the 17 months he was imprisoned in Bosnian Serbs-run camp while another former detainee received € 100 for each day spent in a camp run by Bosnian Croat and Muslim forces. See also Sostaric (2012, p. 53).

micro- and macro-divide as advanced in the transitional justice literature, none of the reparation schemes and claims proceedings discussed in this chapter served either exclusively individual interests or purely collective ones. The legal proceedings initiated by individuals or victims' groups achieved results that would ultimately benefit a wider circle of victims. Equally, measures that were taken in the context of the international and collective reparation programs were to a certain extent tailor made, as the actual awards were based on claims submitted by individual victims. These programs combined collective and individual interests.

In our view, it is indisputable that the legal claims that have been pursued in the aftermath of the Bosnian war, whether by individual victims or larger groups, and whether successful or unsuccessful for the claimants themselves, have nevertheless succeeded in serving broad collective interests. Individual stories were presented as part of collective events. Establishment of responsibility of both high-level defendants (in criminal cases) and authorities also benefitted other victims than the applicants alone. Litigation contributed to recognition of collective victimhood, albeit this was implicitly limited to the victims' own 'ethnic' or national group. Most cases aimed at achieving structural change and sought collective measures, in order to re-establish a relationship with governmental entities. Overall, most court cases were filed on behalf of large groups of victims and were an expression of solidarity within specific victim groups.

The internationally administered mass claims mechanisms were part of an international peace effort, which, in essence, was a political project. The programs claimed to aim at re-establishing a multi-ethnic Bosnia and the restoration of the rule of law. The schemes reached out to groups of victims and aimed at developing structural changes and long-term solutions. However, the restitution program was criticised for insufficiently paying attention to the circumstances of return and the obstacles for return. In the end, many displaced were not able to go back to their places of origin. Responding to the criticism, the international community increasingly adopted a rule-of-law and rights-based approach which, it can be argued, recognized the centrality of individual victims and their particular claims. The HRC is generally praised for its work though some victim groups expressed frustration about collective measures the Chamber ordered, where victims had hoped for the individual handling of each claim.

In the absence of a genuine national reparation scheme in Bosnia, victims have sought recourse to local courts since the conclusion of the international mechanisms instituted by the Dayton Accords at the end of 2003. Most claims were filed on behalf of larger groups of victims, such as former detainees and members of the IC. These claims aimed to compel the authorities to publicly recognize and accept responsibility for the harm suffered by large groups of victims. The claims were also meant to force authorities to come forward with structural changes and solutions that would in turn re-establish trust between victims and the authorities.

This survey of individual and collective efforts to seek or to provide reparations has shown that all measures taken have either explicitly combined elements aimed at serving both individual and collective interests or, in the case of individual legal claims, nevertheless resulted in benefits that transcend the parameters of the court

action itself. The academic distinction between micro-level (individual) and macro-level (collective) reparations thus appears to be largely theoretical in the Bosnian context. Even the most micro-level examples we have presented, that of the individual victim opposing an individual defendant before a foreign or domestic courts, has, as de Greiff would hope, 'an eye also on the preconditions of reconstructing the rule of law, an aim that has public, collective dimension' (de Greiff 2006, p. 457). If not directly reconstructing the rule of law in the theatre where the conflict took place, such an action nevertheless recognizes and upholds the value and the potential of the rule of law. It constitutes an appeal to the broader international legal community to witness the plight of victims of violent conflict and to provide redress where other mechanisms have failed.

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