

Gendered Justice Gaps in Bosnia–Herzegovina

Annika Björkdahl · Johanna Mannergren Selimovic

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Abstract A gendered reading of the liberal peacebuilding and transitional justice project in Bosnia–Herzegovina raises critical questions concerning the quality of the peace one hopes to achieve in transitional societies. By focusing on three-gendered justice gaps—the accountability, acknowledgement, and reparations gaps—this article examines structural constraints for women to engage in shaping and implementing transitional justice, and unmasks transitional justice as a site for the long-term construction of the gendered post-conflict order. Thus, the gendered dynamics of peacebuilding and transitional justice have produced a post-conflict order characterized by gendered peace and justice gaps. Yet, we conclude that women are doing justice within the Bosnian–Herzegovina transitional justice project, and that their presence and participation is complex, multilayered, and constrained yet critical.

Keywords Gender · Gender-just peace · Transitional justice · Bosnia–Herzegovina · Critical agency

Introduction

A gendered reading of the liberal peacebuilding and transitional justice project in Bosnia–Herzegovina raises critical questions concerning the quality of the peace one hopes to achieve in transitional societies. The peace that has been constructed in Bosnia–Herzegovina through nearly two decades of extensive peacebuilding and transitional justice processes is fragile, externally driven, and riven with contradictions and gender inequalities. The gendered dynamics of peacebuilding and transitional justice have produced a post-conflict order characterized by gendered peace and justice gaps. This new reality has meant a conservative backlash for women as gender identities are being reconstructed, reconfigured, and redefined through interactions between the liberal peacebuilding discourse and nationalism, culture, and religion. As

A. Björkdahl
Department of Political Science, Lund University, Box 52, 221 00 Lund, Sweden

J. Mannergren Selimovic (✉)
The Swedish Institute Of International Affairs, Box 27035, 102 51 Stockholm, Sweden
e-mail: johanna.mannergren@ui.se

a consequence, women in BiH have seen their agency circumscribed, their space to maneuver deflated, and their calls for justice unheard.

The post-conflict order of contemporary Bosnia–Herzegovina points to three-gendered justice gaps, where the transitional justice project’s silence about gender perpetuates discursive and material gender subordination. A mapping and critical examination of the accountability, acknowledgement, and reparations gaps unmask transitional justice as a site for the long-term construction of the gendered post-conflict order. Thus, we aim to reveal structural constraints for women to engage in shaping and implementing transitional justice. In addition, we seek to make women visible as agentic subjects that exercise creative, critical agency to further transformations towards a gender-just peace in Bosnia–Herzegovina. Such a double-binded analysis aims to capture agency, which is never absent, always situated, and the dispositions inherent in the gendered justice gaps that incline agents to act and react in different ways. Thus, by mapping the complex and multifaceted ways women exercise agency in transitional justice processes, we are able to recognize women’s attempts to close these gaps by performing justice in unexpected spaces and in unconventional ways.

Adopting a critical approach, we understand transitional justice as part of the liberal peacebuilding discourse—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 postwar experience. Thus, we attempt to reimagine transitional justice as a transformative project towards a “gender-just peace”. A gender-just peace is understood not as a reconstruction of the prewar situation, but as a positive peace that provides for social justice and equity. 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.

Our perspective is that of “transitional justice from below,” and we adopt a methodology associated with ethnography to better present women’s experiences of post-conflict peace and justice. Interview research is becoming an accepted methodology in critical research on peacebuilding and transitional justice. This methodology is about foregrounding interviews and following their lead. Such an approach provides opportunities to identify locally pertinent research questions while also offering a “reality check” of the main arguments presented in this article and staying attuned to varied experiences of peace and justice. Thus, our emphasis on theorizing and abstraction is underpinned by extensive fieldwork, which has been carried out during a period spanning more than 5 years. Our research methods have included one-on-one, semistructured interviews with open-ended questions, participant observation at various locations in BiH, as well as continuous monitoring of political developments and cultural expressions. Interview research enables us as researchers to talk to the subjects of peacebuilding directly, often on their own turf, yielding insights into the lived experiences of women in post-conflict societies. As pointed out by Kronsell (2006, p. 121) “interviews are an important source of information because they can

provide an in-depth, detailed account of how gendered practices are actually carried out.” We find that interviews coupled with participant observation enable the research to enter into the realm of lived experiences, which is the privileged location for this study (c.f. Nordstrom 195:139). Bearing in mind Jacoby’s (2006, p. 171) insightful reflection that “both the researcher and the researched are subjects with agency,” albeit with differing power statuses, our interview strategy was based on network sampling derived from mouth-to-mouth references in the field rather than a formal sample. Focus groups complement interviews by creating a dynamic and interactive site for knowledge production, where participants may introduce and develop new themes and ideas based on their own experience and agency. An important source of information was the focus group conducted in Sarajevo in November 2011 with 14 women peace activists on the subject of gender, power, and peacebuilding.¹ We believe that this approach of “transitional justice from below” makes women’s voices and experiences come to life, so that they inform and ground the abstract academic arguments of the study.

The article is structured as follows: To begin, we provide a gendered reading of transitional justice. We draw upon existing literature in order to briefly map the three central aspects of accountability, acknowledgement, and reparations and identify their respective gendered justice gaps. Moving to the empirical investigation of the Bosnian context, we expand and deepen these insights and further explore how the hierarchies built into liberal peacebuilding and transitional justice have contributed to a highly gendered post-conflict order. First, we analyze the accountability gap and discuss the legal, physical, and socioeconomic discriminatory insecurities of women witnesses, the overall lack of female presence, and misrepresentations of “women-as-victims,” counteracted by examples of the agency of women witnesses. Second, we examine the acknowledgement gap and its silences around women’s multiple war roles, and discuss attempts at gendering the narrative of the past by demanding acknowledgement of rape camps. Third, the reparation gap is investigated to reimagine reparations programs as a tool for challenging existing gender hierarchies and bringing about social transformation. A concluding discussion discloses transitional justice as a site for multifaceted power production including resistance and critical creative women agency.

A Gendered Mapping of Transitional Justice

Peacebuilding and transitional justice are often regarded as ungendered practices and discourses that are able to produce just peace in societies emerging from violent conflict. In contrast, the critical reflexive approach that we here employ reads peacebuilding and transitional justice as an inherently conflictual process and a site for power relations. Transitional justice is, thus, understood not merely in juridical terms but also in political terms with serious implications for gender relations in the post-

¹ The focus group was part of a larger study concerned with obstacles to women’s participation in peace processes. The study also includes case studies from Liberia, The Democratic Republic of Congo, Armenia, Azerbaijan, and Iraq. See Mannergren Selimovic et al., 2012.

conflict society. Although not always recognized, gender is salient in understandings of justice whether it is distributive, retributive, redistributive, positive, or negative justice (Sjoberg 2006, p. 28).

Critical researchers have subsequently begun to analyze how and in what particular ways building peace and doing justice contribute to the disciplinary and normalizing gender practices that has come to characterize the gendered post-conflict phase (e.g., Bell and O'Rourke 2007; Buckley-Zistel and Zolkos 2012; Meintjes et al. 2001; Ní Aoláin 2012; Väyrynen 2010). As a means to provide remedy to the victims of the rights infringed and to recognize victims as citizens and equal rights-bearers, transitional justice is an act of asserting these rights, as well as constructing and validating the legitimacy of the political order that uphold such rights. As part of a political project for creating a more legitimate, democratic, equal, and inclusive post-conflict order, rather than reverting to a broken past, transitional justice may indeed open a window of opportunity—even if small—for women to depart from preexisting and settled practices and norms (Rubio-Marín and de Greiff 2007, p. 325). Yet, a troublesome picture emerges from the mapping and investigation of the micro-practices of power in post-conflict spaces. Peacebuilding and transitional justice processes assign local women a particular type of agency—passive, protected, civilian, and peaceful. Gendered discourses and practices are produced in the friction between the globally driven transitional justice project and conservative, patriarchal values, and norms that tend to grow stronger in the aftermath of war (Meintjes et al. 2001; Mannergren Selimovic et al. 2012). Furthermore, gender is still a complex, multilayered, 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 in a manner that may postulate women as "pacific others" (Elshtain cited in Väyrynen 2010; p. 149). Instead, we employ gender as a relational concept that more broadly informs an understanding of exclusion and marginalization. Gender analysis then is a way of exploring the forms that subordination takes in any particular spaces. Here, we choose to zoom in on the peacebuilding space and its processes of transitional justice.

Accountability

As a core aspect of transitional justice, legal accountability mechanisms are set up in order to end impunity, increase security, and change values through the prosecution of individual war criminals. Legal accountability provides a formalized type of revenge, discourages post-war criminal behavior, and lessens the influence of war criminals. Its moral imperative is 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. Hence, in this sense, accountability measures as part of transitional justice are bestowed a transformative and norm-generating role (Drumbl 2007, p. 73f; Teitel 2000). A gendered reading of legal accountability measures discloses inherently subjective demarcations of what constitutes a crime and who is regarded as a victim (Franke 2006). Until recently, these lines excluded crimes concerning conflict-related, gender-based violence, and in this process neglected many female victims of

war. Important steps to address this gap have been taken over the last decade, and a new legal framework that recognizes gender-based violence has been developed, now permanently installed in the statutes of the International Criminal Court.² Nonetheless, while this is an important achievement and a central building block for narrowing the accountability gap, it is clear that gender-based crimes continue to be marginalized and that victims struggle for recognition. Important obstacles also within the legal mechanisms have been identified, including lack of protection of female witnesses and lack of understanding of the often staggeringly great social prize women have to pay for witnessing in legal trials. Worldwide, there has been only a limited number of convictions for conflict-related sexual violence, indicating that impunity is widespread and that the implementation of legal frameworks in domestic contexts is slow (O'Rourke and Bell 2007).

At the same time, the increased awareness of sexual violence as an aspect of warfare has led to a preoccupation with women-as-victims, a circumscribed subject position that excludes women's multifaceted agency, creating a void around women's plural experiences in the legal history that is being written in transitions from war to peace (Buckley-Zistel and Zolkos 2012). In this history, female perpetrators, although limited in number, are treated as exceptions and not responsible for their actions, even such centrally placed perpetrators as the elite political leaders (Bosnian Serb) Biljana Plavsic and (Rwandan) Pauline Nyiramasuhuko (Sjoberg and Gentry 2008). Another serious consequence of the equating of women with victims of sexual violence is the erasure of male victims of such violence whose experiences have been largely silenced. It is an issue that transitional justice research only lately has begun to explore.

Acknowledgement

Tools for acknowledgement include the popular mechanism of truth commissions. 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, such measures aim for reconciliation by providing space for plural accounts of the past and laying to rest contentions over past events. Individual victims' experiences are pieced together to ideally form a shared narrative of the past (Cohen 2001, p. 224). The knowledge entering into such a shared public discourse is once again highly selective, and close readings of truth commissions have revealed that women's experiences and agency are excluded or marginalized. A 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., Ross 2001; Coulter 2006; MacDowell 2008, p. 337).

Beyond the institutionalized processes of, for example, truth commissions, acknowledgement is sought through commemoration practices, including museums and memorials remembrance days as well as public apologies by leaders. Museums and memorials are becoming important ingredients in the transitional justice package and attract outside donors and policymakers (Hamber et al. 2010). Nevertheless, the emergent focus on commemoration as part of transitional justice has so far hardly generated any studies of

² 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 8.2 ii), and to a certain extent as genocide (article 6d).

its gendered implications (MacDowell 2008 is an exception). The materiality of museums and monuments is often 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. They often express idealized masculinity (e.g., statues of heroic soldiers) and any images of women tend to be enrolled in the service of a patriarchal, (ethno) nationalist post-conflict order. As noted by Yuval-Davis (2008), women are carriers of the nation's pride as well as hurt, and here, the image of "woman-as-victim" functions as a vessel for these emotions. Whatever lies beyond this narrow and often muted subject position is an "excess" and ignored.

Hence, the multiple acknowledgement processes that are ongoing in post-conflict societies create gendered silences that not only distort the historical record and entrench impunity (Ní Aoláin et al. 2011), but also erase important aspects of women agency, as we also noted concerning accountability processes. The fact that there are women combatants is usually ignored (Buckley-Zistel and Zolkos 2012; Sjoberg and Gentry 2008); likewise, women's roles as providers of security, food, and shelter is seldom acknowledged and commemorated (Meintjes et al. 2001). Another important but little discussed aspect of acknowledgement processes is that in polarized and (ethno)nationalist post-conflict contexts, there is scant discursive space for acknowledging actions for peace and reconciliation across enemy borders, actions that are often dismissed as "unpatriotic" and left out of the new national narrative, as women peace activists testify (Focus Group, Sarajevo November 2011).

Reparations

The right to reparation for the violations of human rights in violent conflicts has been increasingly recognized in international law (Rubio-Marín 2006a, b; de Greiff 2006). It is a rights-based political project with the twin aim of giving victims recognition and enhancing civic trust both among citizens and between citizens and state institutions (Rubio-Marín and de Greiff 2007, p. 321). Reparations are the "tangible manifestations of the efforts of the state to remedy the harms victims have suffered" (de Greiff 2006, pp. 1–2). The connection between reparation, reconciliation, acknowledgement, and healing is undeniable and, thus, reparation delayed is healing retarded (Orr 2000).

Reparations have of late also received attention as a tool to readjust 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). 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). Thus, reparations programs need to include material reparations such as 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. Reparations in this sense hold the promise to transform gender relations in society at large (Grina 2011).

Yet, reparations programs have not been designed with an explicit gender dimension. Feminists continue to point out that post-conflict societies often fail to do justice to the victims of conflict-related sexual violence. The gendered nature of sexual

violence and its continued social, psychological, and economic impacts reinforce inequality beyond the peacebuilding and transitional justice processes. Thus, programs for reparations for victims of conflict-related gender-based violence could figure as a special category in state reparations programs. However, gender bias constructs normative and practical barriers preventing women to access the benefits of such reparations programs. There are few such programs that will expedite and assist the achievements of the principal goals of reparation, including recognition, civic trust, and social solidarity between men and women (Rubio-Marín 2009b).³

Gendered Justice Gaps in BiH

During the 1992–1995 war, BiH witnessed large-scale violence and war crimes, ethnic cleansing and displacement, mass rapes, and other forms of sexual violence directed against women, men, and children. Post-Dayton,⁴ war survivors now 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 rebuild their lives in peace.

The BiH transitional justice process has been slow and arduous, and constantly hampered by the ethnonationalist 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 (Impunity Watch 2012, p. 8).⁵

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 gender centers at subnational entity level 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

³ One example is the reparations program recommended in the final report of the Truth, Reception, and Reconciliation Commission in Timor Leste (CAVR), which lists gender equity as one of five guiding principles (Rubio-Marín and de Greiff 2007).

⁴ The Dayton Peace Accord (DPA) of 1995 included the BiH constitution which divided Bosnia–Herzegovina into two entities, the Bosnian-Serb Republika Srpska and The Federation of Bosnia and Herzegovina, where Bosnian-Croats and Bosniaks (Muslims) cohabitate. Following the DPA, BiH saw a decade of international peacebuilding assistance including judicial reforms. In these processes, women were largely absent from political decision making (Björkdahl 2012). Like many other peace agreements, the DPA did not reflect women’s experiences or their expectations of the postwar peace. Assessing the Dayton Peace Accords from a gender perspective, the Swedish NGO Kvinna till Kvinna concludes that gender and women’s rights are not salient in the DPA. In fact, the DPA did “not diminish but reaffirmed the patriarchal nationalism as a dominant ideology and social system in postwar Bosnia” and established a peace that is far from gender just (Cockburn 2013: 127).

⁵ There is also a state-level law on missing persons. Also in its draft stages is a program of assistance for women victims of war rape, sexual violence, and torture 2013–2016.

Gender Action Plan 2006–2010 and a 5-year financial mechanism for its implementation (Impunity Watch 2012, p. 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 the lack of gender-sensitive transitional justice processes.

It is clear that 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 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 BiH, which can to a certain extent be traced to the experience of violence during the conflict or its legacies, seems to manifest itself in increased and more severe cases of domestic violence worsening women's lack of rights and vulnerability (UN 2012, p. 18).

The post-conflict conservative backlash for women, peace, and women's rights is discerning, as activists strongly testify (Focus Group, Sarajevo Nov 2011): "We have seen a retraditionalization of gender roles," as one prominent human rights advocate said, arguing that the period of war and its aftermath brought with it "the exclusion of women from the public space, and also the hidden discrimination within families." Thus, it is worth examining how transitional justice processes contribute to the disciplinary and normalizing gender practices that are at the core of nation building in BiH.

The Accountability Gap

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 (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).

Gendered Politics of Accountability in BiH

As the ICTY now moves to a close, the domestic legal system in BiH is taking over responsibility for the post-war accountability process through The War Crimes Chamber of Bosnia's State Court, as well as courts at the subnational entity levels (Martin Ortega 2013). A gender 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. Furthermore, the legal framework is inconsistent with international

standards and jurisprudence of international courts.⁶ One such inconsistency concerns whether the use or threat of force has to be present in order to prove that the act was not consensual.⁷ Contrary to international jurisdiction, this is the case in Bosnian law (UN, 2012). The need to prove the use or threat of force leads 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, p. 461). Henry’s words that we repeatedly ... “see the replication of denial, minimization, and disbelief where victims of wartime rape are concerned” (Henry 2010, p. 1,101) without doubt ring true in the Bosnian context. It is not rash to say that the international gains concerning the criminalization of conflict-related sexual violence are not made permanently, but under constant negotiations.

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 who do participate take certain risks. Several witnesses have been threatened and programs for witness protection are either nonexistent 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). It is clear that criminal justice provide women not just with relief but also wounds. By coming forward to testify, Bosnian girls and women may 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, pp. 177–179). The long-term consequences of being ostracized in their communities combined with ongoing threats and feelings of insecurity may prove too overwhelming for many women (Focus Group, Sarajevo November 2011).

Recognizing Female Witnesses as Agentive Subjects

Despite these difficulties, Bosnian women and girls have 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 critical participation 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

⁶ The complexity of the justice system in BiH means that two criminal codes are in use with sometimes contradictory approaches (Impunity Watch 2012: 41).

⁷ Articles 172 and 173 in the Criminal Code of BiH.

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 paid by those women who do testify, one must ask what entices them to actually take part in these processes. Their choice to participate in accountability mechanisms and demand justice for crimes committed against them in the face of social repercussions is certainly an example of critical agency. However, it is a form of 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 already been discussed above. An added stereotype here is the prevalent idea that women testify in criminal courts with the main focus to advance 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 testifying. 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, p. 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, p. 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, p. 55).

These findings illustrate that the court can be a site for victims to exercise critical and creative agency. In the courtroom, they not only confront the perpetrators but also challenge patriarchal norms that define their lived experiences in the post-conflict every day. Thus, an important observation is that women's agency in these proceedings has been narrowly interpreted in a way that may obscure and render their critical political work invisible. In order to narrow the accountability gap, these restraints need to be lifted and women's multiple roles acknowledged and identified.

The Acknowledgement Gap

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.

Gendered Politics of Acknowledgement in BiH

In deeply fractured post-war BiH, claims for acknowledgement are interpreted as part of ethnonationalist reconfigurations of the political. As a consequence, several attempts to organize a national truth commission have failed (Kritz 2002, p. 60f; Freeman 2004, p. 7f), political elites routinely protest any verdict by the ICTY that infringes on their own version of the truth (e.g., Mannergren Selimovic 2010), and commemorations are highly

politicized as the different “sides” of the conflict celebrate their own “war heroes.” Suggestions by women peace organizations to create a “Victims’ 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 ongoing as local projects but without any bearings on national and entity levels.

As the struggle continues around 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 a global emblematic image of that war as analyzed by Hansen (2000), 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.

Agency from Below—Resisting Silence

Despite these restraints, women have attempted to break silences. A specific event illustrates the writing out of women’s experiences from the new postwar narratives, and also how women exercised critical agency “from below” by attempting to challenge these blanks and demand acknowledgement of women’s experiences. The event that we refer to took place in 2004, when a group of women traveled together to the small town of Foca in the Bosnian Serb Republic (Republika Srpska), a wartime 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 in Republika Srpska as well as from the physical space. The white “Partizan” building, which was one of the main camps where women and girls were imprisoned, is situated in the town center. 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. Some of the women who embarked on the bus journey to the town in 2004 had been held prisoners in the rape camps, 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 discursive and physical inclusion has many layers. The women challenged the highly ethnonationalist tale of victimhood among Bosnian Serbs. They disrupted the image of the heroic soldier (commemorated only a few meters away), and they 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 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 from their “own side” (Interview Sarajevo 2008).

Breaking the Silence in Unexpected Sites

The critical agency exercised by the former victims did not yield any direct results. Public silence still engulfs the 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. A critical debate around the invisibility of the conflict-related violence has been expressed in fictionalized form.

The Bosnian film *Grbavica* (English title *Esma's Secret—Grbavica*) released in 2006 and directed by Jasmila Zbanic is about a rape victim who deals with postwar life in Sarajevo as a resourceful but struggling single mother. The role turns the nameless victim into a subject dealing with the ongoing 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). Zbanic also wrote and directed a short documentary film *Red Rubber Boots* about a mother's ceaseless mourning as she searches excavation sites for remains of her lost child. The film captures the drive of the subject to fill the void and raises questions such as meanings and practices of motherhood after a traumatic past, as well as linking it to explorations of memory, remembrance, witnessing, and women's subjectivities and identification models in the Bosnian present (Husanovic 2009). 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, p. 180) to identify expressions of critical agency that refute essentialist configurations of gender and nation. A deepened understanding of the gendered dimension of ethnonationalism is, hence, needed in order to grasp how acknowledgement processes can come to fully encompass women.

The Reparation Gap

The gendered reparation gap that we notice in BiH is caused by a gender bias inherent in many rights system and magnified by the absence of women in the design and implementation of reparations program. Participation of women could make reparations gender-sensitive as well as 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, p. 324).

The right to reparations is part of the shift in transitional justice from a focus on perpetrators to the needs of victims. Given that women represent a large proportion of the victims of contemporary conflicts, this shift has a potential to bring to the fore women as claimants for reparations. As women experience conflicts in different ways, reparations programs need to be designed to redress women more fairly and efficiently. When asked what their preferred type of compensation is, women 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 (Impunity Watch 2012, p. 74).

Reparation Programs in BiH

The question of reparations for victims was neglected by the ICTY (Nollkaemper 2009, p. 204), and BiH does not have a comprehensive reparations program at the state level to redress human rights that have been violated (Martin Ortega 2013). 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 legislation⁸ 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, p. 74).⁹ In many ways, the distinction between the compensation payments, e.g., 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 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 diminishes their ability to exercise agency to shape their own postwar existence.

To come to terms with this gender bias in reparations programs, women have recently drafted the Program for of Assistance to Women Victims of War Rape, Sexual Violence, and Torture 2013–2016. Furthermore, the development of the Program 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. In addition, the draft of the Transitional Justice Strategy for BiH holds, in addition to gender provisions, two distinct

⁸ 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, 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, pp. 49–50).

⁹ The government system for compensations to war victims in BiH is complex, and the recipients are categorized into four categories as follows: (1) disabled war veterans (military payment), (2) payments to families of fallen or missing soldiers (military payment), (3) payments to civilian victims, and (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) compared with 69,451 persons receiving military payments.

approaches to reparations as follows: A victim-centered approach through activities that consider recognition of victims' suffering, regaining of their dignity, and resocialization 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 sociocultural and sport activities).

The Gendered Politics of Reparations

Contrary to expectations, the issue of reparations has played a negative role in the reconciliation process in BiH. This is particularly the case 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" (Ní Aoláin 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 victims and survivors within the ethnic communities. Due to the particular design of the reparations programs, victims of conflict-related sexual violence have unintentionally been pitched against camp survivors constructing a difference between "majority" and "minority" victims because of program design (Simpson et al. 2012, p. 137).

Reparations hold the potential to strengthen the social contract defined in the DPA 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, preexisting structural inequalities" (Rubio-Marín 2009, 2009a, p. 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 conflict-related 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.

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 so. This was noted by one of the participants in the focus group in Sarajevo who stated: "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, p. 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 Center is an example of women performing reparations. Set up in 1993 to meet the needs of women raped in the nationalist ethnic cleansing campaigns, it was a women’s project based on international–local cooperation, although all staff were themselves Bosnian war survivors. Providing medical care, psychotherapy, trauma treatment, and various other approaches to healing while promoting gender awareness, Medica increasingly also addressed domestic violence, “everyday rape,” escape from prostitution, and trafficking in the post-conflict era (Cockburn 2013, p. 28). Over time, Medica has developed a strategic partnership with state services, while at the same time challenging politicians lobbying for women’s rights and provisions (Cockburn 2013, p. 32). Many women NGOs in BiH function as service providers, stepping in where reparations are lacking, delayed, or insufficient. 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.

Conclusions

What lessons do the transitional justice project in Bosnia–Herzegovina offer for reflecting upon women agency in transitions from war to peace? Is gender-just peace possible given deep-rooted patriarchal gender regimes that determine women’s multiple subject positions? What are the parameters of a gender-just peace in the post-Dayton era? These are important questions that demand answers if the transformative potential of transitional justice is to advance peace and justice towards a gender-just peace in post-conflict BiH and beyond. This article is but one attempt to bring some potential answers to the fore.

The three gendered justice gaps examined here have unmasked transitional justice as a site for the long-term construction of the gendered post-conflict order. The analysis has also brought to the fore a number of paradoxes illustrating women’s sense of injustice and the failure to meet their calls for justice. First, the number of war crime cases that involve sexual violence that have been prosecuted are extremely low, all the while that the fight against impunity remains a top priority. Security issues remain a problem for witnesses in the domestic court system. Second, the postwar narratives marginalize women’s experiences, both as victims but also as combatants, perpetrators, and peacemakers. Third, the victims of conflict-related sexual violence remain socially and economically marginalized, and there have been no comprehensive reparations program to redress the human rights violations. Fourth, complicated legal framework, institutional complexity, and the absence of rights for victims of wartime rape have impeded access to care, despite awareness that unhealed war traumas lead to deterioration of survivors’ wellbeing and health. Fifth, state service for victims of conflict-related sexual violence has at large been absent, and in the meantime, women organizations have stepped in to assist the victims. Thus, the gendered accountability gap, acknowledgement gap, and reparations gap remain,

and they seem to reinforce each other, as do the patriarchal, religious, and nationalist discourses that impede efforts to address these gaps.

Our investigation of the gendered justice gaps in BiH has allowed us to examine women's presence, participation, and agency in "doing justice." We have unpacked women's agency without pretending to provide more than snapshots of the workings of gendered agency and the complexity of exercising agency in transitional justice spaces. Still, the insights derived from this in-depth study of the particular case of BiH provide important lessons that are applicable in other post-conflict societies and in the future design of transitional justice programs. What becomes clear is that women engage with the transitional justice project both as objects and subjects. They perform transitional justice in both conventional and unconventional spaces of justice, and we have observed prevalent tensions between women agency and the gendered transitional justice project. Clearly, all agents are not equally placed to shape the transitional justice processes and affect the outcome in terms of justice and peace. This is an important point for those thinking of new spaces for gender-just peace.

A gender-just peace is peace and justice cognizant and inclusive of gender and associated with a positive peace. Such peace is the outcome of a transformative process including both gendered peacebuilding and transitional justice processes. It is an emancipatory peace where the peace dividend is realized in the everyday. In BiH, as in many other places, a gender-just peace 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 2000). 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 transitional justice and peacebuilding literature at large that has urgently been pointed out in recent literature.

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