



# “WOUNDS THAT BURN OUR SOULS”

COMPENSATION FOR KOSOVO’S WARTIME RAPE SURVIVORS, BUT STILL NO JUSTICE

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**Cover photo:** The “Heroinat” memorial in Pristina, dedicated in 2015 to the sacrifice and contribution of women during the 1998-1999 Kosovo war.

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# ACRONYMS

BIH	Bosnia and Herzegovina
CEDAW	International Convention on the Elimination of Discrimination against Women
CEDAW	Committee for the Elimination of Discrimination against Women
CESCR	UN Committee on Economic, Social and Cultural Rights
CRSV	Conflict-Related Sexual Violence
ECHR	European Convention on Human Rights
ECTHR	European Court of Human Rights
EULEX	EU-led Police and Justice Mission
FRY	Federal Republic of Yugoslavia
HRAP	Human Rights Advisory Panel
ICESCR	International Covenant on Social, Economic and Cultural Rights
ICTY	International Criminal Tribunal for the Former Yugoslavia
KLA	Kosova Liberation Army
KRCT	Kosova Centre for the Rehabilitation of Torture Victims
KWN	Kosova Women's Network
NGO	Non governmental organization
OSCE-KVM	Organization for Security and Cooperation in Europe - Kosovo Verification Mission
OWCP	Office of the War Crimes Prosecutor (Serbia)
SFRY	Socialist Federal Republic of Yugoslavia
SPRK	Special Prosecution Office of the Republic of Kosovo
UNSC	United Nations Security Council
UNMIK	UN Interim Administration Mission in Kosovo

# GLOSSARY

WORD	DESCRIPTION
COMPENSATION	Compensation refers to the damages that victims are entitled to receive for the harm suffered. The compensation should strive to remedy the moral and material harm caused by the crime and take into consideration the lost opportunities, including education, employment, and earning potential.
CONFLICT RELATED SEXUAL VIOLENCE	Incidents or patterns of sexual violence against women, men, girls or boys occurring in a conflict or post-conflict setting that have direct or indirect links with the conflict itself.
RAPE	When 1) A perpetrator invades the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body, and 2) The invasion is committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent. <sup>1</sup>
REPARATION	Reparation refers to the measures adopted by the states to 'repair', as much as possible, past harms, help victims rebuild their lives and reintegrate into society. Reparation must be proportional to the gravity of the violation and effective in law and practice. Five recognized forms of reparation include restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition.

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<sup>1</sup> International Criminal Court, Elements of Crimes, 2011, available at [www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf](http://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf)

# EXECUTIVE SUMMARY

**“My husband was killed in the war, one son was killed and the other is missing. My three daughters, and my daughter-in-law were raped; and I was raped.”**

E.S.

Almost two decades after the war, survivors of conflict-related sexual violence (CRSV) in Kosovo are still waiting. They are waiting for justice, long-overdue reparation and recognition of what they have gone through. But the wait will be over soon for some. For the first time in Kosovo, preparations are underway to provide reparation, mainly in the form of a monthly compensation payment, to women and men who were raped or suffered other sexual violence during the 1998-9 armed conflicts.

The reparation provided may not be commensurate with the gravity of the crimes committed against them, or adequate compensation for what they have endured. However, it may - at last - provide survivors with some help to restore their lives and enable them to spend their remaining years in dignity and, in providing them with public recognition, help to challenge the stigma that has overshadowed their lives.

At this important moment for Kosovo's survivors of rape and other conflict-related sexual violence, this report documents the actual needs of survivors, and demonstrates how the lack of access to justice, and shortcomings in the reparation law, still leave many survivors without the remedies they are entitled to under international law, and which they so desperately need.

## THE IMPACT OF WAR

By the end of the war in Kosovo in June 1999, an estimated 12,000 Kosovo Albanians had been killed; some 3,000 civilians had been disappeared by the Yugoslav Army and Serbian police, and more than half of Kosovo's civilian population were living in refugee camps in Albania and Macedonia.

Among them were women and girls, who - as they fled to safety - had been dragged by Serbian police, paramilitaries or soldiers from the columns of refugees fleeing Kosovo, and raped, sometimes repeatedly, before they were sent on their journey. Others had already been raped, in their homes, often in the presence of their family, or in temporary refuges they found for their dependent children and elderly parents, as they attempted to escape both the fighting on the ground and the war from the air. Some had remained in Kosovo, with no protection. Their testimonies speak of multiple incidents of violent rape, most often by several perpetrators - be the Serbian police, paramilitaries or Yugoslav Army soldiers. These crimes amount to the war crime of torture; and have been found to have been so systematic as to constitute crimes against humanity.

In the aftermath of war, another phase of enforced disappearances, murders and rapes began as the Kosova Liberation Army (KLA) embarked on revenge attacks against Kosovo Serb and Romani civilians; women from those communities were raped, as were Kosovo Albanian women perceived as collaborators.

Eighteen years later, many survivors have never even spoken to their closest family about what happened to them. Some, counselled by nongovernmental organizations (NGOs) are able to talk about their experience

but few have spoken publicly about what they endured. They have been silenced by the deeply entrenched social stigma, which still overshadows wartime rape.

This report is based on research conducted in Kosovo in September and November 2017, and interviews with survivors; NGOs and international organisations; representatives of the Kosovo government; Kosovo Police investigators and war crimes prosecutors in Kosovo's Special Prosecution Office; EU-led Mission in Kosovo (EULEX) police and prosecutors, and other members of the international community. It builds on almost two decades of Amnesty International's research into impunity for crimes under international law and gender-based violence in Kosovo.

## **SURVIVORS DENIED ACCESS TO JUSTICE**

Despite the widespread and systematic nature of CRSV in Kosovo, only a few of those responsible have been prosecuted, and the clear lack of political commitment to prosecute these crimes makes it unlikely that many more of those suspected of criminal responsibility for rape and other sexual violence in Kosovo will be brought to justice.

To date, trials have been held in three separate courts with jurisdiction over Kosovo: at the International Criminal Tribunal for the former Yugoslavia (ICTY); at the Special War Crimes Chamber in Belgrade in Serbia; and in Kosovo's courts.

In 2009, the ICTY convicted three of the most senior Serbian political, police and military officials for their joint criminal enterprise in war crimes and crimes against humanity in Kosovo, including for "sexual assaults" as form of persecution, and as a crime against humanity; a fourth senior official was convicted in 2014 of "persecutions through sexual assaults, as a crime against humanity".

In Serbia, two trials for rape in Kosovo have been concluded at the Special War Crimes Chamber in Belgrade; all were brought against former KLA members; only one resulted in a conviction.

In Kosovo itself, only three prosecutions for war-time rape have been completed; each resulted in an acquittal after appeal, after courts found there was insufficient evidence to identify the alleged perpetrator.

This report documents the failings of both the United Nations Interim Administration Mission in Kosovo (UNMIK) and the EU-led Police and Justice Mission (EULEX) in investigating and prosecuting cases of conflict-related sexual violence. Rape and other wartime sexual violence was not a priority for either of these international authorities. UNMIK police and prosecutors failed to promptly open effective investigations into reports of rape, despite directly receiving testimonies from survivors, and failed to inform survivors of any progress in their cases. Subsequently, EULEX police and prosecutors failed to effectively address UNMIK's legacy of hundreds of un-investigated war crimes cases, prosecuting fewer than 40 cases and inheriting identifying only nine cases of rape or other conflict-related sexual violence; only two cases of CRSV have been prosecuted to date. Now, as EULEX prepares to leave Kosovo, the transfer of responsibility for investigation and prosecution from EULEX to the Special Prosecution Office of the Republic of Kosovo is nearing completion. This report questions how Kosovo's woefully under-resourced war crimes prosecutors, inexperienced in the prosecution of CRSV, can possibly remedy the mistakes of the past and overcome new obstacles to ensure justice for the survivors.

By June 2018, EULEX aims to transfer over 1,000 war crimes case files to the Special Prosecution Office (many still to be investigated), which may include further cases of CRSV. Yet there is increasing concern that evidence may be missing – including testimonies made to UNMIK by survivors who have heard nothing from the prosecutorial authorities since the early 2000s. Yet, with only two war crimes prosecutors in the SPRK, it will be impossible to fully investigate any of these cases without a political commitment to employ more prosecutors and support staff, and to provide the resources needed to move towards ending impunity.

Failed by UNMIK, failed by EULEX, it is not surprising that few survivors have any faith in Kosovo's own justice system.

In Serbia, meanwhile, a continuing culture of impunity prevents the prosecution of police, para-military groups and military commanders reasonably suspected of war crimes, including CRSV in Kosovo. In addition, when responsibility for prosecutions fully transfers from EULEX to the SPRK, the limited cooperation between EULEX and the War Crimes Prosecutor in Belgrade will end.

Serbia does not recognise Kosovo's 2008 unilateral declaration of independence and considers Kosovo to be part of Serbia, (as it remains under UN Security Council Resolution 1244/99). The legacy of impunity for war crimes, has never been discussed at the high level European Union (EU)-brokered talks aimed at

“normalising” the relationship between Serbia and Kosovo. Yet, without an agreement between Kosovo and Serbia on mutual legal assistance, there will be very little progress in bringing those responsible for conflict-related sexual violence in Kosovo to justice.

## **FULFILLING THE SURVIVORS’ RIGHT TO REPARATION**

Under international law, the government is responsible for guaranteeing victims’ rights to justice, truth and reparation. This obligation includes equal and effective access to justice and the right to adequate, effective and prompt reparation for the harm suffered, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Collectively, these measures are meant to address the suffering of the victims and help them rebuild their lives.

Reparation for survivors of CRSV in Kosovo is long overdue; they have endured the physical, psychological, social and economic impact of sexual violence for over 18 years. Since 1999, both UNMIK and the Kosovo government had failed in their international obligation to survivors, who had instead received support and assistance from NGOs. Survivors were not recognised in regulations and laws providing reparation for military and civilian victims of war, introduced by UNMIK in 2000 and by the Kosovo government in 2012.

In March 2014, following a sustained campaign of activism and advocacy led by women’s NGOs working with survivors, the rights of the survivors to reparation, including compensation were finally recognised in amendments to the existing law on the rights of combatants and other civilian victims of war.

The amended law provided both female and male survivors with public acknowledgement and the right to apply for administrative reparation. However, they have had to wait until January 2018 to finally apply for the status of survivor of war-time sexual violence and receive compensation in the form of a monthly payment, as well as some other limited forms of reparation.

Survivors described to Amnesty International the impact that rape and other forms of sexual violence has had on their entire lives, on their physical and mental health, on their livelihoods and lost opportunities, and on their family and community relationships. In their own words, they described how the stigma, and concepts of shame and inappropriate blame, still attached to rape, has blighted their lives and silenced their voices. Each hoped that public recognition and concrete support from the authorities would change public perceptions and help them rebuild their lives.

Under the leadership of President Atifete Jahjaga (2012-2016), progress was made in both reaching out to survivors, and in initiating a National Council on Survivors, including both government and civil society. The Council drew up measures required to implement the law, including processes and protections to ensure that women might safely, and without fear of their identity being revealed, apply for and receive reparation.

However, from 2016, progress stalled, and the Verification Commission responsible for deciding on survivors’ applications was not created until April 2017. Now, with procedures and a budget in place, survivors will be able to apply for the status for victims of war-time sexual violence from January 2018.

## **REPARATION FAILS TO MEET SURVIVORS NEEDS**

However, the current provisions in law adopted in 2014 still fall short of those set out in international standards for the victims of crimes under international law (war crimes and crimes against humanity), and with this report – which draws on the testimonies of survivors – Amnesty International seeks to encourage the Kosovo authorities to consider additional measures to meet their real needs.

This report examines the provisions for reparation provided to survivors under the 2014 legislation – in light of survivors’ needs and in comparison with international standards. The 2014 legislation provides survivors with a form of administrative reparation, and reflects best practice in that it excludes a degree of physical injury as a qualification for eligibility. However, in other respects, it lacks provisions to fully address their needs.

Survivors will receive a monthly payment of €230, (around 90% of the average salary for women in Kosovo) as a form of compensation. Amnesty International considers this in principle a just and dignified amount, as required in international law. For many, this is more than an income – however welcome - but a means of regaining their self-esteem, re-establishing their autonomy and ending their dependency on their families.

However, limits to the law may exclude a significant number of survivors. The law time-limits eligibility to the period of armed conflict, defined as ending on 20 June 1999, and thus discriminates against women who were raped thereafter, predominantly Kosovo Serbs, Roma and some Albanian women. Moreover, survivors who already receive another war-related payment (for example, if their husband was killed or injured), will have to choose which benefit they want to receive, as the law prohibits beneficiaries from receiving two pensions. Finally, the law grants survivors only five years to make their applications. Based on the rate of applications for similar programmes elsewhere in the region, Amnesty International considers this period to be too short.

International standards require that reparation provisions include access to free or affordable health care. While other civilian victims of war in Kosovo receive free primary and secondary health-care, this is denied to survivors of CRSV, who are eligible only for the largely impractical option of receiving treatment abroad. The law does not provide for psychological and psychosocial assistance, critical to recovery, and provided to date by NGOs; nor is it readily available within Kosovo's health service. In addition, most survivors do not meet the criteria for rehabilitation-related employment provided by the law, designed for those seriously physically disabled by war-time injuries. While – on a small scale – NGOs and their funders have been able to provide some survivors with the ability to generate their own income, the government now needs to initiate similar, and more sustainable, programmes on a larger scale to ensure survivors' economic empowerment and access to employment.

## ENDING THE STIGMA

Even when the law starts being implemented, and survivors decide to apply, women will still face many personal obstacles, (in some cases, from their families), in realising their right to reparation. This is why Amnesty International is calling for comprehensive and transformative reparation, including restorative justice – to challenge the stigma and enable survivors' voices to be heard in their communities, without condemnation, to allow them to apply for compensation and other benefits, without being ostracised by their families or communities. NGOs have already started this work, and now it needs the commitment and involvement of the authorities in Kosovo to truly be effective.

Transforming this culture will take many forms: the government needs to strengthen the protection and promotion of women's rights to live free from violence, including rape, domestic violence and trafficking. Most importantly it needs to reinforce the message that the survivors – and other women who continue to experience gender-based violence on a daily basis - are not responsible for this violence. This should not only include strengthening the justice system to bring perpetrators of war time rape to justice, but to ensure access to justice for all women who have, and continue to experience gender-based violence in Kosovo.

## KEY RECOMMENDATIONS

### TO THE GOVERNMENT OF KOSOVO:

- Ensure that the Special Prosecution Office and specialised Kosovo Police are provided with sufficient specialised and trained staff, and resources to prepare case of war-time sexual violence for prosecution, with due respect for participating witnesses/survivors;
- Amend the law on reparation to ensure it meets international standards. Specifically the scope of the law should include sexual violence in the immediate aftermath of the conflict, and provide survivors with adequate, appropriate and timely access to healthcare and appropriate psychological support and social services, without discrimination on the basis of status or ethnicity;

### TO THE EU:

- Initiate discussions on mutual legal cooperation in war crimes investigations and prosecutions within the context of the high level talks on the normalization of relationship between Serbia and Kosovo;

**TO DONOR COUNTRIES, INCLUDING IN PARTICULAR THE UNITED KINGDOM:**

- Continue supporting initiatives and programmes that assist victims of conflict-related sexual violence including with legal aid, health care, psychosocial assistance and reintegration, including through funding state providers and NGOs delivering these services.

**TO SERBIA**

- Agree to a high level discussion facilitated by the EU to firstly ensure temporary arrangements for prosecutorial cooperation until an agreement can be reached on mutual legal assistance, including in the exchange of evidence and other information relevant to prosecutions of war crimes, including war crimes of sexual violence in both jurisdictions.

# METHODOLOGY

This report is primarily based on missions to Kosovo in September and November 2017, where interviews were carried out with survivors, non-governmental organisations (NGOs) working with survivors, and on transitional justice; international non-governmental organisations; government representatives; war crimes investigators and prosecutors in the Kosovo police, and in Kosovo's Special Prosecution Office; EULEX prosecutors and police; and other members of the international community.

It is underpinned by desk research and previous missions to Kosovo between 2000 and 2015, which focussed on impunity for crimes under international law, the failure of UNMIK and EULEX to effectively investigate and prosecute war crimes, including conflict-related sexual violence, and the failure of authorities to guarantee reparation to the survivors. It also draws on research in Serbia into impunity for war crimes, including crimes of sexual violence in Kosovo.

Quotations from survivors included in this report are taken from interviews over 30 survivors aged between 32 and 69,<sup>2</sup> conducted by Amnesty International in September 2017. The majority were Albanian, but included Kosovo Serb and Romani women. Interviews were conducted in Albanian with the assistance of an interpreter familiar with the survivors. To protect their identity and respect their privacy, Amnesty International asked the survivors to choose a name or initials that they wished to be known by; they are not their real names or their initials. All have given their informed consent to the inclusion of their stories in this report. Some unattributed quotations are drawn from contributions made by survivors and NGO participants in discussions at a two day conference on addressing stigma.<sup>3</sup> Information is also drawn from previous interviews with minority women.<sup>4</sup>

This report uses the term Conflict-Related Sexual Violence (CRSV) to apply to rape and other forms of sexual violence, "when [it is] used or commissioned as a tactic of war in order to deliberately target civilians, or as part of widespread or systematic attack against civilian populations".<sup>5</sup> In the majority of cases, both the Albanian and Serbian place-names are used, although Amnesty International uses the Serbian/international names, Pristina, rather than Prishtine, and Kosovo, rather than Kosova.

Thanks are due to Feride Rushiti, Ardiana Bytici, T.K., Mirlinda Sada and Veprorre Shehu; and to Igballe Rugova, for her unceasing advocacy for women's rights. Profound thanks are also due to each woman who was prepared to put her trust in Amnesty International, and share her story. This report is written with the aim that they, and all other survivors of rape and sexual violence, should be able to realise their rights to justice and reparation.

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<sup>2</sup> Including two women who were children at the time of the armed conflict.

<sup>3</sup> "Hear my voice: Addressing the stigma surrounding the survivors of sexual violence during war in Kosovo", organised by the Kosova Rehabilitation Centre for Torture Victims (KRCT) on 14-15 September. Supported by the UK Embassy in Kosovo.

<sup>4</sup> Amnesty International interviews in Montenegro, 2000; Kosovo, 2002 and Macedonia, 2006.

<sup>5</sup> CRSV refers to incidents or patterns of sexual violence in conflict or post-conflict situations which include: rape, sexual slavery, forced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity, against women, men, girls or boys, see for example, Conflict-related sexual violence - Report of the Secretary-General (S/2016/361, para. 2; .UNSC Resolution 1820, S/RES/1820 (2008), 19 June 2008, operative paragraph 1.

# BACKGROUND

**“Rape is a wound that will burn your soul day by day; it will make you ashamed in front of your family, in your community. You will carry it all of your life. If a woman had no hand, she would be proud to say that she had lost it in the war; if she was blind, or had lost her legs, everyone would help her. But this, they have kept secret in their hearts, and they could not tell”.**

T.K

## THE CONTEXT

In March 1998 an internal armed conflict erupted in Kosovo, then a province of the Republic of Serbia, within the Federal Republic of Yugoslavia (FRY). In 1989, the Serbian government had revoked Kosovo's autonomous status, but following a 1991 referendum, Kosovo Albanians declared independence. There followed almost a decade of systematic human rights violations against Kosovo Albanians, including incidents of rape, primarily by members of the Serbian police force.<sup>6</sup> By the mid-1990s the Kosovo Albanians' strategy of non-violent resistance and parallel institutions, under the leadership of Ibrahim Rugova, was increasingly challenged when some Kosovo Albanians took up arms against Serbian forces.

In 1998 the frequency and intensity of human rights violations perpetrated by FRY and Serbian security forces and paramilitaries, increased, and by March, had developed into an internal armed conflict between the Kosovo Liberation Army (KLA) and other armed groups seeking independence, and FRY forces, Serb police and paramilitary groups. During this period, ethnic Albanian men and women were subjected to arbitrary arrests, torture and other ill-treatment, unlawful killings and other deliberate and indiscriminate attacks.<sup>7</sup> The Centre for the Protection of Women and Children (CPCW) reported that women were raped by Serbian police officers and Yugoslav Army soldiers.<sup>8</sup> Some Kosovo Serb civilians were abducted, and subjected to torture and other ill-treatment and deliberate killings by armed ethnic Albanian groups including the KLA. Both local NGOs and international observers, including the 1998 Kosovo Verification Mission,

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<sup>6</sup> Amnesty International, FRY (Kosovo), *A Decade of Unheeded Warnings*, Vols. 1 & 2, (Index: EUR 70/39/99 & EUR 70/40/99).

<sup>7</sup> *A Decade of Unheeded Warnings*; Human Rights Watch (HRW), FRY, *Kosovo: Rape as a Weapon of "Ethnic cleansing"*, March 2000, Vol 12, No. 3 (D), <https://www.hrw.org/legacy/reports/2000/fry/index.htm#TopOfPage>, Rachel Wareham, *No Safe Place, An Assessment on Violence against Women in Kosovo*, UNIFEM, 2000, p.57-78, [http://iknowpolitics.org/sites/default/files/nosafeplace\\_kosovo.pdf](http://iknowpolitics.org/sites/default/files/nosafeplace_kosovo.pdf)

<sup>8</sup> HRW, *Kosovo: Rape as a Weapon of "Ethnic cleansing"*, p, 7.

documented rape and sexual violence in this period.<sup>9</sup> By June 1998 an estimated 60,000 ethnic Albanians had fled or been forced from their homes; most were internally displaced within Kosovo; others sought international protection.

On 24 March 1999, following the failure of talks in early 1999 at Rambouillet in France, which sought agreement between the FRY and representatives of Kosovo Albanians, NATO commenced a bombing campaign – which lasted until 10 June 1999 – against the Yugoslav Army, Serbian Ministry of Interior police and paramilitaries with the declared aim of preventing a humanitarian catastrophe in Kosovo.<sup>10</sup>

Simultaneously, the ground war intensified into a campaign of armed violence against the Kosovo Albanian civilian population, which aimed to drive people from their homes, either by directly ordering them to leave (including by forcing them onto trains which took them to the Macedonian border) or by creating an atmosphere of terror from which they fled for their lives. By 4 May 1999 an estimated 677,000 Kosovo Albanians were refugees or displaced; (the majority would subsequently return between July and August).<sup>11</sup>

Across Kosovo, villages were shelled and houses were burned. More than 9,000 men, women and children, the majority of them civilians, were killed by Serb forces. At least 3,000 Kosovo Albanians were the victims of enforced disappearances by FRY and Serbian forces. Rape by police, paramilitaries and armed forces became widespread and almost routine. As a Serbian army deserter testified, "Rape had become normal, like taking a shower and having breakfast."<sup>12</sup>

In June 1999, NATO concluded a Military Technical Agreement with the governments of the Republic of Serbia and FRY, and an agreement on the end of hostilities with the KLA.<sup>13</sup>

The withdrawal of the Yugoslav Army and Serbian police between June and July 1999 was accompanied by escalating human rights abuses. An estimated 800 Serbs, Roma and members of other minority groups, mainly but not exclusively adult males, were abducted and killed by the KLA or other armed groups. Kosovo Serb, and Roma and Ashkali, women and girls were subjected to rape and sexual assaults in the months after the end of the war.

## FROM INTERNATIONAL “PROTECTORATE” TO UNILATERAL INDEPENDENCE

In June 1999 the UN Security Council, through its Resolution 1244/99, established the UN Interim Administration Mission in Kosovo (UNMIK) with a broad mandate to administer Kosovo. With executive powers to govern Kosovo, UNMIK was charged with responsibility for “protecting and promoting human rights,” and with re-establishing the rule of law.<sup>14</sup> This included responsibility for the investigation and prosecution of crimes under international law, including war crimes.

Under the same resolution a NATO-led Kosovo force (KFOR) was deployed with a mandate to prevent the resumption of hostilities; ensure a safe and secure environment for the return of refugees and displaced persons; and to secure “conditions for a peaceful and normal life for all inhabitants of Kosovo.”<sup>15</sup>

Following the 2007 “Ahtisaari plan” which proposed Kosovo’s internationally-supervised independence,<sup>16</sup> in 2008 the Kosovo government declared unilateral independence. While UNMIK remained in Kosovo, it was

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<sup>9</sup> The OSCE Kosovo Verification Mission, charged with verifying whether Serb and FRY forces were observing an agreement made in October 1998, with the aim of establishing a ceasefire. The KVM collected testimonies of rape, some of which are published in, *As Seen, As Told*, <http://www.osce.org/odihr/17772?download=true>, February 1999.

<sup>10</sup> Amnesty International: “Collateral Damage” or Unlawful Killings? *Violations of the Laws of War by NATO during Operation Allied Force*, Index: EUR 70/18/00, June 2000.

<sup>11</sup> Including 396,000 in Albania, 204,000 in Macedonia and 62,000 in Montenegro, UN Office of the High Commissioner for Human Rights, 4 May 1999, <http://www.unhcr.ch/news/media/kosovo.htm>

<sup>12</sup> Serbian army deserter testifying on atrocities in Kosovo to UNHCR in Skopje, (former Yugoslav Republic of Macedonia, in 1999, Wareham, *No Safe Place*, p.57 [http://iknowpolitics.org/sites/default/files/nosafeplace\\_kosovo.pdf](http://iknowpolitics.org/sites/default/files/nosafeplace_kosovo.pdf)

<sup>13</sup> Under this agreement, NATO ground forces entered Kosovo as the VJ, Serbian police and paramilitary forces withdrew from Kosovo, before the end of July 1999, *Kumanovo Agreement*, 9 June 1999, <http://www.nato.int/kosovo/docu/a990609a.htm>; NATO, *Undertaking Of Demilitarisation And Transformation By The UCK*, 20 June 1999, <http://www.nato.int/kosovo/docu/a990620a.htm>

<sup>14</sup> Resolution 1244 (1999), Adopted by the Security Council at its 4011th meeting, on 10 June 1999, see Article 10, Article 11 (j) 11(i); S/RES/1244 (1999), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/172/89/PDF/N9917289.pdf?OpenElement>; under the first regulation passed by UNMIK. “All legislative and executive authority in Kosovo, including the administration of the judiciary is vested in UNMIK and is exercised by the Special Representative of the Secretary General”, UNMIK Regulation 1999/1, Section 1.1, 25 July 1999.

<sup>15</sup> UNSC resolution 1244/99, Article 9.

<sup>16</sup> Comprehensive Proposal For the Kosovo Status Settlement, 2 February 2007, <https://www.kuvendikosoves.org/common/docs/Comprehensive%20Proposal%20.pdf>

replaced by an EU-led mission, EULEX with limited executive powers, but with the responsibility for the investigation and prosecution of crimes under international law.

## CONFLICT-RELATED SEXUAL VIOLENCE IN KOSOVO

There is no accurate estimate of how many women and girls, or men and boys, were raped or suffered other forms of sexual violence during the Kosovo wars.<sup>17</sup> Irrespective of the exact figure, sufficient credible accounts of rape and other crimes of sexual violence were gathered by local and international NGOs during the internal armed conflict,<sup>18</sup> and in its aftermath,<sup>19</sup> suggesting that rape and other forms of sexual violence were widespread and systematic.

Kosovo Albanian women and girls were raped or sexually assaulted by members of Serbian police<sup>20</sup> and paramilitary forces and by Yugoslav Army soldiers.<sup>21</sup> These crimes of sexual violence did not take place in isolation, but in the context of other violations: women reported being raped after Serb forces had come to their village, and separated them from the men (and sometimes boys), who were taken away and killed; women were raped in their homes, or abducted from their homes; they were raped after they had taken flight from their homes, carrying their children and belongings, hiding in woods or outbuildings, or when they ventured out to find food. The assaults continued as they were forced out of Kosovo, when women and girls were pulled out of the columns of refugees, taken off to be raped, and then returned, sometimes shortly afterwards, but sometimes several days or weeks later.

**“We were in the crowd. They would take you, grab your arm and put you in a house. I was locked in a room without any windows for 22 days. You could hear other women screaming from the other rooms. It was terrible; it would have been easier to die. The man would come in the evening and leave in the morning; it was always the same man. To this day I remember the face. I can draw the man.”<sup>22</sup>**

Most women report being raped multiple times, and most often by more than one individual.<sup>23</sup> Such rapes, which under international law amount to torture, were often accompanied by other forms of inhumane, humiliating or degrading treatment, including being beaten, being bitten, cut with knives, having cigarette butts put out on their bodies or being photographed naked.<sup>24</sup> They were forced to have anal sex or fellate police and paramilitaries.

**“She was crying when she came back. She told us she had been raped by three or four soldiers. She cried for a long time. She asked us why we were lying about it because she said she knew it had happened to us too.”<sup>25</sup>**

Women and girls were also abducted in large groups, detained in a house or barn and repeatedly raped - sometimes for several days, and in some cases for up to two months.<sup>26</sup> An unknown number of women and

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<sup>17</sup> The most frequently quoted estimate suggests that the number may be as high as 20,000. This figure is based a survey conducted by the US-based Centre for Disease Control, which estimated that 4.4% of the female population of Kosovo had been raped or sexually assaulted. Amnesty International has been unable to find a link to the original research data.

<sup>18</sup> During the internal armed conflict between February 1998 to March 1999, 61 reports of rape or other sexual violence against Kosovo Albanian women by Serbian police forces and Yugoslav Army soldiers had been documented. Thirty-six of these incidents had been reported to the Pristina-based Centre for the Protection of Women and Children (CPWC) by December 1998. Other accounts were received by the OSCE-Kosovo Verification Mission who reported rapes, sexual assaults and other humiliating and degrading treatment by Serbian police officers, often in women's homes, or following arrest, *As Seen, As Told*, (as above); see also HRW, *Rape as a weapon*, p.7

<sup>19</sup> Including by CPCW, Pristina; Albanian Counselling Centre for Women and Girls, who interviewed refugee women in Albania; Humanitarian Law Centre, Belgrade; Council for the Defence of Human Rights and Freedoms, Pristina; Medecins sans Frontières, Physicians for Human Rights and other medical professionals in Albania and Kosovo; and Amnesty International, see HRW, *Rape as a weapon of 'ethnic cleansing'*, p.2

<sup>20</sup> The European Roma Rights Centre (ERRC) also reported the rape of Romani women during the war: Q.Z. told the ERRC that in February 1999, while she and her cousin were waiting at a bus stop in Prizren, they were asked for their documents by Serbian police officers, who then told them to accompany them to the police station. Instead, she stated that three of the police officers took them to a forest “where they raped us”, interviewed in Kumanovo, Macedonia, 24 May 1999, see ERRC, *Roma and the Kosovo conflict*, 15 July 1999, [HTTP://WWW.ERRC.ORG/ARTICLE/ROMA-AND-THE-KOSOVO-CONFLICT/798](http://www.errc.org/article/roma-and-the-kosovo-conflict/798)

<sup>21</sup> From the relatively small number of sources available, men were more likely to be raped while in some form of detention.

<sup>22</sup> Extract from the testimony of H.H, published in “*I want to be heard*”, *Memory Book, with stories of women survivors of torture during the last war in Kosovo*, 2017, pp.48-54.

<sup>23</sup> These patterns were reported by Human Rights Watch, who by the end of the international armed conflict in June 1999, had confirmed 96 “credible accounts” of rape and other forms of sexual violence, and believed the number to be much higher. These 96 accounts included interviews conducted by HRW; accounts gathered by local and international NGOs; interviews carried out in refugee camps in Albania and Macedonia, and conducted in Kosovo by medical professionals and other international NGOs.

<sup>24</sup> Amnesty International interviews with survivors, September 2017; Interviews published in, “*I want to be heard*”, *Memory Book*, see also “New Memory Book on Wartime Sexual Violence”, 15 May 2017, <http://kosofovopointzero.com/en/new-memory-book-wartime-sexual/>; for biting, see HRW, *Rape as a weapon*, p. 12 and footnote 33.

<sup>25</sup> Amnesty International, *Kosovo: Incidents of multiple rape*, News Service #104/99, Index: EUR 70/76/99, 27 May 1999.

<sup>26</sup> HRW, *Rape as a weapon*, p. 11 & 18-19; Wareham, *No Safe Place*, p.62.

girls were killed after being raped.<sup>27</sup> These violations took place all over Kosovo, but were most frequently reported in Pristina, Decane, Glogoc, Dreničë, Peja, Gjakova, Prizreni and Rrahovac.<sup>28</sup>

In Kosovo, rape and sexual violence was mostly but not only directed against Kosovo Albanian women. Both during the war, but predominantly in the months that followed, Kosovo Serb and Romani women and girls (and some men) were also subjected to rape and sexual assaults by members of the KLA or other armed groups. Some Albanian women, who were perceived to have been collaborators were also raped.<sup>29</sup> UNMIK recorded 155 allegations of rape between June 1999 and December 2000 alone.<sup>30</sup>

**“He pushed me on the bed and tore off my T-shirt. He began kicking me, and told me that Serbs did the same thing to Albanian women, then he put the pillow over my head and started to rape me. Then, they were taking turns and I don’t know how many of them there were”.**<sup>31</sup>

By 2000, investigators from the ICTY were in Kosovo gathering evidence, including from NGOs,<sup>32</sup> towards the indictment of Slobodan Milošević and other senior political and military leaders of the Federal Republic of Yugoslavia and Serbia, for war crimes and crimes against humanity in Kosovo.

## SPEAKING OUT

One of the first women to speak out was Sevdije Ahmeti, co-founder in 1994 of the Pristina NGO CPWC. Speaking to Mary Robinson, then UN High Commissioner for Human Rights, in July 1999, she described a campaign of organised rape between 1998 and early 1999, during which time, she had counselled 36 women who had been raped by Serbian special police units.<sup>33</sup> She had also been raped: at 3am on 4 May 1999, the door of the house where she was living in hiding was broken down by three masked men carrying machine guns. She was sexually assaulted and her husband, sister and other relatives were beaten and tortured. She appealed to other survivors to speak out, “I have spoken to give them courage, but it is very hard to talk about what happened. The fear has gone deep into the bones”.<sup>34</sup>

<sup>27</sup> See for example, Chapter 1, p. 28, footnote 199.

<sup>28</sup> In Serbian, Priština, Dečani, Glogovac, Drenica, Peć, Đakovica, Prizren and Orahovac.

<sup>29</sup> Amnesty International conducted interviews between 2000 and 2007 in Montenegro, Kosovo and Macedonia, including with witnesses to the post-war rape of a Romani girl abducted with her wedding party in Gjakove/Đakova; with a Romani woman and an Ashkali woman raped in Pristina; and in relation to the rape of a Kosovo Serb woman in Gnjilane/Gjilan. The ERRC documented two incidents: interviewing a man who witnesses the rape on 29 June 1999, of his wife and sister; and a woman from Mitrovice/Mitrovica raped by six men on 2 June 1999, “Press Statement: The Current Situation of Roma in Kosovo,” 9 July 1999,

<sup>30</sup> EULEX Human Rights Review Panel, Annual Report 2016, <http://www.hrrp.eu/docs/HRRP%20Annual%20Report%202016.pdf>

<sup>31</sup> Testimony of Kosovo Serb woman, provided to Amnesty International in 2002.

<sup>32</sup> CPCW provided information and testimonies to ICTY investigators, see CPCW, *Relationships between ICTY and NGOs: A bitter experience*.

<sup>33</sup> Irish Times, “Robinson hears stories of atrocities and pleads for justice, not revenge”, 1 July 1999,

<https://www.irishtimes.com/news/robinson-hears-stories-of-atrocities-and-pleads-for-justice-not-revenge-1.201643> Sevdije Ahmeti, had documented human rights abuses against women in Kosovo for ten years prior to the NATO bombing, and contributed to Amnesty International, see, *A Decade of Unheeded Warnings*, especially “Human rights violations against women in Kosovo Province”, August 1998, Index: EUR 70/54/98, Document Series B. #1.

<sup>34</sup> Women’s Aid to former Yugoslavia (WATFY), interview with Sevdije Ahmeti, September 1999, Kosovo Update, no.16, p. 5. Not available online. Sevdije Ahmeti died on 19 November 2016, see “RrGGK kujton aktivisten Sevdije Ahmeti”, 19 November 2016, <http://archive.koha.net/?id=&l=143273>

# 1. JUSTICE DENIED

**“He grabbed my hair and pushed me into the house, and tore my clothes, then he pushed me to perform oral sex. At that moment I vomited, and he punched my ears, and I couldn’t hear, and then many of them came, and they raped me from behind. I felt they were tearing me apart”**

Vera

Despite the scale and intensity of rape and other forms of sexual violence during, and after, the armed conflicts in Kosovo, only seven cases involving charges relating to the systematic rape and sexual assaults which took place in Kosovo have been completed (after all appeals and retrials) in courts with jurisdiction over Kosovo.

Proceedings for CRSV in Kosovo have taken place in three separate courts: at the International Criminal Tribunal for the former Yugoslavia (ICTY), which in 1999, raised indictments against senior Serbian political, police and military leaders, for their superior responsibility for war crimes and crimes against humanity in Kosovo; at the Special War Crimes Court in Serbia, in proceedings primarily against Kosovo Albanians; and in Kosovo’s courts. Defendants been convicted in only three cases – four defendants at the ICTY and one in Serbia. Only three cases have been completed in Kosovo’s courts; in each case the defendants were acquitted.

While legislation providing a measure of reparation to survivors is about to be implemented, they continue to be denied access to justice. As prosecutors in the EU-led Mission in Kosovo (EULEX) hand over responsibility for the investigation and prosecution of crimes under international law to war crimes prosecutors in the Special Prosecution Office of the Republic of Kosovo (SPRK), this report documents how both UNMIK and EULEX, with all the resources available to them, failed to effectively investigate and prosecute cases of conflict related sexual violence, and looks at the obstacles now faced by Kosovo’s prosecutors in bringing those responsible to justice.

Under international law, the victims of gross violations of international human rights law and serious violations of international humanitarian law have the right to equal and effective access to justice.<sup>35</sup> Yet, in both Serbia<sup>36</sup> and in Kosovo, police and prosecutors have failed in their obligation to investigate violations promptly, thoroughly and impartially and, where admissible evidence exists, bring all those suspected of responsibility to justice, in accordance with international law.

The prosecution of Conflict-Related Sexual Violence (CRSV) is often difficult and complex. However, in Bosnia and Herzegovina (BiH) 134 defendants have been convicted of CRSV in over a quarter of the 400

<sup>35</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, (UN Basic Principles), VII, 11 (a), Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005

<sup>36</sup> Amnesty International, *Serbia: Ending Impunity for Crimes under International Law*, Index: EUR 70/012/2014, June 2014.

completed war crimes cases.<sup>37</sup> While progress may be painfully slow for the remaining survivors, some have received justice; so why have Kosovo's justice systems so lamentably failed Kosovo's survivors?

This chapter examines the obstacles to prosecution in cases of CRSV in Kosovo, including UNMIK's failure to promptly investigate reports of rape and other sexual violence, and EULEX's failure to fully address UNMIK's legacy of un-investigated case-files. With less than a year before all remaining war crimes cases are transferred by EULEX to Kosovo's Special Prosecution Office (SPRK), it identifies the almost overwhelming combination of inherited mistakes and organizational obstacles Kosovo's war crimes prosecutors face in attempting to deliver justice to survivors of CRSV, almost 18 years after the war. Finally, this chapter briefly examines why Serbia has failed in its duty to bring to justice officials and individuals, suspected – respectively - of command or individual responsibility for CRSV in Kosovo.

### **AT THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (ICTY)**

In February 2009, five of the most senior former political, police and military commanders in the Federal Republic of Yugoslavia (FRY) were convicted of war crimes and crimes against humanity in Kosovo.<sup>38</sup> The Trial Chamber found that in 1999 there was “a broad campaign of violence directed against the Kosovo Albanian civilian population during the course of the NATO airstrikes, conducted by forces under the control of the FRY and Serbian authorities, during which there were incidents of killing, sexual assault...” These included sexual assaults in the municipalities of Decane/Dečani, Srbica, in Beleg village (Peć), Ćirez (Kline) and Pristina, which were qualified as a crime against humanity.<sup>39</sup>

Three senior officials were specifically held responsible for sexual assaults as a form of persecution. Former Yugoslav Deputy Prime Minister Nikola Šainović, former Yugoslav Army General Nebojša Pavković and Police General Sreten Lukić were convicted of the deportation, forcible transfer, murder and persecution (including sexual assaults) of thousands of ethnic Albanians, and each sentenced to 22 years' imprisonment.<sup>40</sup> The Trial Chamber also found that both Nebojša Pavković and Sreten Lukić, in occupying positions of command responsibility, had reason to foresee, but had failed to prevent sexual assaults.<sup>41</sup>

In 2014, former Assistant Minister of Interior Vlastimir Djordjević was also convicted, following appeal, “of persecutions through sexual assaults, as a crime against humanity”.<sup>42</sup>

The ICTY also indicted Ramush Haradinaj, former commander of the KLA's Jablanica compound and former unit commander, Idriz Balaj, for the alleged rape of a Romani woman at Jablanica in August 1998, in a broader indictment for crimes against humanity and war crimes. Both were acquitted in April 2008.<sup>43</sup> In July 2010 the Appeals Chamber ordered a partial retrial, on the grounds of “the threat [that] witness intimidation posed to the trial's integrity”. The defendants were again acquitted in November 2012.<sup>44</sup>

## **1.1 UNMIK'S FAILURE TO INVESTIGATE**

**“We have no hope that we will get justice. I was 30 when it happened, and now I am almost 50; maybe I will be dead by the time they solve it.”**

Under Resolution 1244/1999, UNMIK was mandated to protect and promote human rights, and establish the rule of law in Kosovo.<sup>45</sup> The responsibility for investigating and prosecuting serious crimes, including crimes under international law was set out in the UN Secretary General's report, which accompanied the resolution, and which emphasised, “the need to bring to justice those who are suspected of having

<sup>37</sup> In 123 of 400 cases, Amnesty International, *We Need Support, Not Pity. Last Chance for Justice for Bosnia's Wartime Rape Survivors*, pp. 11 & 22, September 2017, Index: EUR 63/6679/2017. Trials for CRSV in BiH have also been completed at the ICTY and in Serbia.

<sup>38</sup> Charges relating to “sexual assaults” were not made in the original indictment against Slobodan Milošević and others, (CASE No. IT-99-37, 22 May 1999), but in the second amended indictment, Case No. IT-99-37-PT, dated 16 October 2001.

<sup>39</sup> No specific allegations of sexual assault are included in the persecution charges, but see paras. 27 & 72, <http://www.icty.org/x/cases/milutinovic/tjug/en/090226summary.pdf>, paras. 183 -203, and <http://www.icty.org/x/cases/milutinovic/tjug/en/jud090226-e1of4.pdf>

<sup>40</sup> Others convicted: former VJ Colonel General Vladimir Lazarević and General Chief of Staff Dragoljub Ojdanić; former President Milan Milutinović was acquitted. The case against Slobodan Milošević was discontinued after his death.

<sup>41</sup> Judgment summary, 26 February 2009, <http://www.icty.org/x/cases/milutinovic/tjug/en/090226summary.pdf>

<sup>42</sup> Case No.: IT-05-87/1-A, <http://www.icty.org/x/cases/djordjevic/acjug/en/140127-summary.pdf>; Appeals Chamber Judgement, paras. 914-929, <http://www.icty.org/x/cases/djordjevic/acjug/en/140127.pdf>

<sup>43</sup> [Haradinaj et al. \(IT-04-84\)](#), Lahi Brahimaj, a member of the KLA general staff, was acquitted of crimes against humanity but convicted for war crimes for the cruel treatment and torture of two witnesses and sentenced to six years' imprisonment.

<sup>44</sup> Amnesty International, “Kosovo: If they are not guilty, who committed the war crimes?” 29 November 2012, <https://www.amnesty.org/en/latest/news/2012/11/kosovo-if-they-are-not-guilty-who-committed-war-crimes/>

<sup>45</sup> For UNSC Resolution 1244/99 see above, p. 13 and footnote 14.

committed the most serious crimes, including war crimes”.<sup>46</sup> Yet by 2006, after monitoring UNMIK’s progress since 2000, Amnesty International observed that “perpetrators of war crimes and crimes against humanity during the conflict in Kosovo in 1998 and 1999 have escaped prosecution. .... Survivors have not received reparation for acts of torture and rape”.<sup>47</sup>

**“Most of the cases were gang rapes, in groups. Or they entered the house, and for example, they took the wife and the whole family were witnesses. There is no woman who doesn’t have a witness - a family member or a neighbour”. T.K.**

Although survivors provided their statements to UNMIK police, or made statements to other international organizations - including the ICTY - which were passed on to UNMIK, UNMIK did not raise one indictment for rape or other CRSV, despite the availability of witnesses and the proximity in time to the violations. The evidence suggests that UNMIK received a significant number of statements, yet only nine open case files were passed on to EULEX.

**“UNMIK did not exercise due diligence in the investigation of violence against women and indicated that its failure to conduct gender-sensitive investigations might have contributed to the general lack of documentation of conflict-related sexual violence in Kosovo and hampered access to justice by, and reparations for, victims”. UNMIK Human Rights Advisory Panel.<sup>48</sup>**

In 1999, before UNMIK had established a functional police force capable of receiving and acting on reports of war crimes,<sup>49</sup> many women had already made statements testifying that they had been raped to other organisations, including the NATO-led Kosovo Force (KFOR) stationed around Kosovo. UNMIK police subsequently received a file of over 50 statements taken by KFOR in 1999, but did not open investigations into these reports until 2001. However, when UNMIK police went to interview the women, they denied their statements or said they didn’t want to testify. UNMIK attributed this to cultural factors, but failed to acknowledge the lack of sensitivity in the way in which police had conducted their investigations.<sup>50</sup>

UNMIK police also failed to open investigations promptly, even when survivors approached them directly. T.K, director of an NGO that promotes the right of women told Amnesty International that some 25 women from the centre had made statements to UNMIK police, (which were later repeated to EULEX and Kosova Police officers), but none of those who provided testimonies to UNMIK have ever been informed of whether any investigations were opened into their complaints, whether any progress was made in those investigations, and whether their cases remain open or closed.

**“I accompanied 12 women to UNMIK between 2003 and 2006. The worst thing was that they never gave them copies of their statements or allowed them to have a lawyer. They made their statements to a police officer from Finland. We went five or six times, but no one contacted us again. Some of them knew the perpetrators, their name and surname. Some were para-militaries: women heard their nicknames when they were calling to each other. One survivor gave UNMIK the ID card that fell out [of his pocket] when he was raping her”.<sup>51</sup>**

In 2006, UNMIK Police’s then Director of Criminal Investigations, told Amnesty International that none of the international police officers recruited to conduct war crimes investigations had any expertise in cases of gender-based violence, nor had they been trained in how to approach survivors. In addition, criteria for selecting international judges and prosecutors did not include previous expertise in war crimes or crimes of gender-based violence, nor did they receive any training in the adjudication or prosecution of CRSV.<sup>52</sup>

UNMIK’s own Human Rights Advisory Panel (HRAP) found that UNMIK had shown a shocking disregard for the rights of victims in other war crimes cases, including enforced disappearances and abductions.<sup>53</sup> The HRAP found that UNMIK police had failed to register cases, or pass them onto prosecutors; failed to promptly secure evidence, or locate or interview witnesses; the HRAP also found a lack of prosecutorial

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<sup>46</sup> UNMIK’s responsibility for law and order was spelled out in the accompanying Report of The Secretary-General on The United Nations Interim Administration Mission in Kosovo, S/1999/779, 12 July 1999, For UNMIK police, paras. 60-65; see Judicial Affairs, paras. 66-78,

<sup>47</sup> *Kosovo (Serbia): The UN in Kosovo – a Legacy of Impunity*, Index: EUR 70/015/2006, November 2006,

<sup>48</sup> UNMIK Human Rights Advisory Panel, *Final Report*, 2016, p. 78.

<sup>49</sup> Investigations into allegations related to war crimes were initially investigated by the UNMIK Police Central Criminal Investigation Unit (CCIU), which was operational by September 1999, (<https://www.nato.int/kosovo/press/1999/k990920a.htm>); a dedicated War Crimes Investigation Unit (WCIU) was subsequently established. UNMIK assumed full responsibility for law and order in December 2000, by which time around 4,400 international police had been deployed.

<sup>50</sup> Amnesty International interview with the head of UNMIK’s Victims Advocacy and Assistance Unit in April 2007.

<sup>51</sup> Amnesty International interview, T.K., September 2017.

<sup>52</sup> Amnesty International interview with Wayne Hissong, 2 April 2006. See *Failed Justice Mission*, p.76.

<sup>53</sup> The HRAP was charged with reviewing complaints from individuals who considered that UNMIK had violated their human rights. Over half of the 527 complaints reviewed were brought by relatives of missing and murdered persons, who complained that UNMIK police had failed in their obligation to investigate these crimes.

supervision, and a failure to inform victims of any progress in their case. The HRAP's findings, when compared to information received from survivors and other organisations, strongly suggest that complaints made by CRSV survivors were treated in the same manner, and in too many cases, as in the case below, no investigation was ever opened.<sup>54</sup>

In 2016, the Human Rights Advisory Panel considered a complaint brought by S.M. against UNMIK. S.M. stated that on 26 June 1999, his mother (Mrs M.), "was assaulted in their family home in Bellopole/Belo Polje village, Pejë/Peć municipality, by numerous Albanian men, including one wearing KLA insignia. The attackers assaulted her, blindfolded her and tied her to a chair, and then within earshot, three of them raped her daughter, Ms X., (S.M.'s sister), who had mental and physical disabilities. They then killed her daughter by slitting her throat with a razor".<sup>55</sup>

The HRAP found that, "such a heinous situation is properly classified as reaching the threshold of torture. This is obvious in regards to Ms X. where the accumulation of the acts of physical violence and the especially cruel acts of rape to which she was subjected amounted to torture in breach of Article 3 of the ECHR. The treatment her mother Mrs M. was subjected to also amounts to torture, as she was forced to bear witness to the horror acted upon her mentally challenged daughter.<sup>56</sup> Although UNMIK had received complaints from S.M. and from witnesses to the killing of three men in the same village, the HRAP found that UNMIK had "failed to effectively investigate the rape and killing of Ms X. and the assault of Mrs M". They found "no evidence in the [police] file that UNMIK made any investigation whatsoever into Ms X.'s rape"; and concluded that "Ms X. was subject to gender-based violence that was not investigated with due diligence by UNMIK, in violation of the relevant provisions of the CEDAW Convention".<sup>57</sup>

As noted in the previous chapter, UNMIK police recorded 155 allegations of rape made between June 1999 and December 2000 alone.<sup>58</sup> As in the case described above, these allegations were predominantly reported by Kosovo Serb and Romani women, but despite the evidence available, UNMIK failed to investigate. For example, Amnesty International has documentation of a case where Kosovo Police, then under the supervision of UNMIK police, took a statement from a Kosovo Serb woman, who was able to identify some of the men who had abducted, raped and beaten her. The Kosovo Police arranged a medical examination which verified that she had been raped, and opened an investigation, but no further action was ever taken.<sup>59</sup>

In 2000, UNMIK introduced judicial panels composed of a majority of international judges, assigned to adjudicate war crimes cases, including appeals.<sup>60</sup> UNMIK conducted two appeals and retrials in cases involving allegations of CRSV which had been tried before December 2000 by Kosovo Albanian judiciary. Both cases ended in acquittals. The transcripts of these proceedings (see over page)<sup>61</sup> in both cases reveals that UNMIK international prosecutors and judiciary were not aware of, or failed to, apply international standards which provide for special evidentiary rules in cases of sexual assault or rape, which state that no corroboration of the victim's testimony shall be required.<sup>62</sup>

UNMIK's responsibilities for investigating and prosecuting war crimes ended in November 2008; they had completed just 40 war crimes cases, 21 of which - including the two cases cited below - had been initiated and adjudicated, in the first instance, by local prosecutors and judiciary. The investigation and prosecution of rape and other war crimes of sexual violence was clearly not amongst UNMIK's priorities. The resulting

<sup>54</sup> Amnesty International, *Serbia (Kosovo): UNMIK's Legacy: The Failure to Deliver Justice and Reparations to the Relatives of the Abducted*, Index: EUR70/009/2013, August 2013. HRAP, *The Human Rights Advisory Panel, History and Legacy, Kosovo, 2007-2016, Final Report*, pp.69-72, [http://www.unmikonline.org/Publishing/Images/2016/HRAP%20Final%20Report/HRAP%20Final%20Report%20\(final%20version%2030%20June%202016\).pdf](http://www.unmikonline.org/Publishing/Images/2016/HRAP%20Final%20Report/HRAP%20Final%20Report%20(final%20version%2030%20June%202016).pdf)

<sup>55</sup> Opinion, Date of adoption: 18 March 2016, Case No. 342/09, S.M. against UNMIK, [http://www.unmikonline.org/hrap/Eng/Cases%20Eng/342\\_09%20S.M.%20FINAL%20opinion.pdf](http://www.unmikonline.org/hrap/Eng/Cases%20Eng/342_09%20S.M.%20FINAL%20opinion.pdf)

<sup>56</sup> S.M. against UNMIK, para. 138, ECtHR, *Maslova and Naibandov v. Russia*, 839/02, 24 January 2008, para. 106.

<sup>57</sup> S.M. against UNMIK, para. 151 & para.148, "pursuant to CEDAW General Recommendation No. 19, UNMIK had an obligation to act with due diligence to investigate, prosecute and punish the act of violence that was committed against her".

<sup>58</sup> EULEX Human Rights Review Panel, Annual Report 2016, <http://www.hrrp.eu/docs/HRRP%20Annual%20Report%202016.pdf>

<sup>59</sup> Amnesty International, *Kosovo (Serbia): The challenge to fix a failed UN justice mission*, pp. 5, 57 & 84-85, Index: EUR 70/001/2008, January 2008. For a subsequent prosecution in Serbia, related to these allegations, see p. 28.

<sup>60</sup> UNMIK Regulation 2000/64, On Assignment of International Judges/Prosecutors and/or Change of Venue, December 2000, <http://www.unmikonline.org/regulations/2000/reg64-00.htm>

<sup>61</sup> Jokić case, Verdict, No. P. no. 27/2000, District Court of Gjiilan (local panel), 20 September 2000, rev'd, Verdict, No. AP nr. 8/2001, Supreme Court of Kosovo (international panel), acquittal; retrial Verdict, No. P. No. 45/2001, District Court of Gjiilan (international panel), 3 May 2002, Amnesty Available online, at <https://hlc-kosovo.org/?p=1292>; see also Amnesty International, *Kosovo (Serbia): The challenge to fix a failed UN justice mission*, pp. 84-85. Velimir Jovanovic case K. br 2/2000, 29 March 2001 (appeal); Kz. br.122/2001, 18 August 2001 (retrial), available only in Serbian; Amnesty International is grateful to Anka Kurteshi Hajdari, HLC-Kosovo, for drawing attention to this case.

<sup>62</sup> ICTY, Rule 96 Evidence in Cases of Sexual Assault (Adopted 11 Feb 1994).

failure to conduct prompt, effective and impartial investigations into allegations of CRSV, in this period so close to the war, has created a legacy of impunity which later prosecutors have been unable to remedy.

### **APPEALS AND RETRIALS CONDUCTED BY UNMIK PROSECUTORS**

In September 2000, Miloš Jokić, a Montenegrin paramilitary, was convicted of war crimes against the civilian population before a panel of Albanian judges at Gnjilane/Gjilan District Court in proceedings brought by a local prosecutor. He had been indicted on six counts, including murder, pillage and the rape of a woman, M.T., on 30 May 1999 in the village of Verban (Viti/Vitina municipality), and sentenced to 20 years' imprisonment. In April 2001, Miloš Jokić's conviction was reversed on appeal by an international panel of UNMIK judges at the Supreme Court, on the grounds that the District Court had failed to consider the evidence carefully or call defence witnesses. The retrial, prosecuted by UNMIK, led to an acquittal on 3 May 2002, on the basis that the identification of the defendant by M.T and other witnesses was not credible.

Velimir Jovanović, an army reservist, had been convicted by Albanian judiciary in 2000 of the attempted rape of H.S., on 16 May 1999, which the court had qualified as an ordinary crime, rather than a war crime. Velimir Jovanović was alleged to have forcibly taken H.S. to a house; when she tried to escape, Velimir Jovanović hit her with his gun, knocking her out; thinking he had killed her, he fled. She was found by members of her family. In March 2001, UNMIK overturned the conviction on appeal. In the retrial before both UNMIK and local judiciary, Velimir Jovanović was acquitted on the basis that court was not satisfied with the testimony of H.S., or that of her family and neighbours.

## **1.2 EULEX: WHAT HAPPENED TO THE RAPE CASES?**

**“EULEX inherited 1200 war crimes cases from UNMIK. We have closed or dismissed (due to lack of evidence) 500 of these. We also initiated 51 new war crimes cases, including the first-ever investigations into cases where acts of sexual violence or rape have been assessed as war crimes,”** Bernd Borchardt, EULEX Head of Mission, June 2013.<sup>63</sup>

In December 2008, the European Union Rule of Law Mission in Kosovo (EULEX) took over UNMIK's policing, prosecutorial and judicial functions, including the investigation and prosecution of crimes under international law.<sup>64</sup> They inherited 1,187 war crimes files and almost 2,000 files relating to missing persons; 47 ongoing war crimes cases were transferred to EULEX prosecutors in Kosovo's Special Prosecution Office (SPRK).<sup>65</sup> Yet EULEX inherited only nine cases from UNMIK related to allegations of CRSV; in addition, EULEX opened another three cases, and received a further CRSV case from another court in Kosovo.<sup>66</sup> As of September 2017, in just under nine years, EULEX had conducted prosecutions in 38 war crimes cases, including only two for CRSV.

Back in January 2008, Amnesty International urged EULEX not to repeat UNMIK's mistakes, and recommended that, “The relevant police and judicial authorities, in close consultation with all sectors of civil society, especially women's human rights groups, should develop a long-term action plan to end impunity in Kosovo for all crimes under international law, including rape and other crimes of sexual violence”.<sup>67</sup>

EULEX found many challenges in the investigation of cases of CRSV, including the lack of adequate resources; the lack of a proper witness protection programme: the absence of any physical evidence, the effect of time on the survivors' memories and the lack of institutional support to the victims. In a meeting with a EULEX representative, KWN was told that cases of CRSV were not a priority, “because time had passed, identifying witnesses to testify was difficult, and evidence was lacking”.<sup>68</sup> However, following these

<sup>63</sup> Bernd Borchardt, EULEX Head of Mission, EULEX and War Crimes, 14 June 2013, <http://www.eulex-kosovo.eu/en/news/000427.php>

<sup>64</sup> EULEX was established on 4 February 2008 under joint action 2008/124/CFSP, initially mandated until 14 June 2010.

<sup>65</sup> Since 2008, 800 war crimes cases were transferred from the EULEX War Crimes Investigation Unit to EULEX prosecutors, Memorandum by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his mission to Kosovo, from 5 to 9 February 2017, 2017, para. 16, <https://wcd.coe.int/ViewDoc.jsp?p=&id=2456443&Site=COE&direct=true>.

<sup>66</sup> Information received from EULEX Prosecutors. On review, only seven of the nine cases received from UNMIK included allegations of CRSV; the other case was transferred from the prosecution office in Peja.

<sup>67</sup> Amnesty International, *The challenge to fix a failed UN justice system*, p. 79.

<sup>68</sup> KWN with Sirpa Rautio, former Head of Human Rights and Gender Office, EULEX, 21 September 2011, quoted in 1325, Facts and Fables, A collection of stories about the implementation of United Nations Security Council Resolution 1325 on Women, Peace, and Security in Kosovo, pp. 8-90, <http://www.womensnetwork.org/documents/20130120165559661.pdf>

meetings with women's organizations EULEX began to identify cases of CRSV, and by October 2011, two out of five identified cases were under investigation by EULEX War Crimes Investigation Unit.<sup>69</sup>

Yet, as of September 2017, only two cases of alleged rape (described below) had come to court, of which only one, resulting in an acquittal, was concluded.<sup>70</sup> On this particular case, the Humanitarian War Centre in Pristina, commented, "*The verdict issued on April 17, 2013, acquitting the defendants of the charges of rape, leaves other victims of sexual abuse less hopeful of seeing their perpetrators punished and justice served*".<sup>71</sup>

### **PROSECUTIONS FOR RAPE BROUGHT BY EULEX (1) V.K.**

According to HLC-Kosovo, which monitored this case, proceedings were brought only at the insistence of V.K., then living outside Kosovo, and with the support of her family.<sup>72</sup>

In November 2012, EULEX prosecutors indicted Jovica Dejanović, a Serbian police officer, for the abduction of a 16 year old girl, V.K. on 14 April 1999, in the village of Stanoci Ultë/Donji Stanovac. Armed with a rifle, he allegedly took V.K. from her home, in the presence of her family, and threatening her with a knife, forced her to take part in "different types of sexual acts" in his car. After he had left, Đorđe Bojković, a civilian, found V.K. crying, but armed with a pistol, he allegedly took V.K., to an empty property in a nearby village where he "forced her, against her will, to have sexual intercourse".

The trial was conducted in April 2013 before international judges at Mitrovicë/Mitrovica Basic Court. V.K. gave her testimony via video link, in a closed session.<sup>73</sup> Ten other witnesses, her family and neighbours, appeared for the prosecution. While the court accepted the substance of V.K.'s allegations, the court concluded that the identities of the perpetrators could not be established "beyond reasonable doubt".

The decision was made on the basis of procedural errors made by police with respect to V.K.'s identification of the defendants in 1999 and 2012. V.K. had been interviewed eight times by police and or prosecutors; on 10 October 1999, she had identified Jovica Dejanović from photographs shown to her by the KLA police. On 13 October 1999, she was interviewed by an UNMIK investigator, and although V.K. said stated that she had later given the photographs to an UNMIK police officer, UNMIK's file in her case only contained her hand-written statement. No further action was taken by UNMIK.

On 17 July 2012, when EULEX started to re-investigate the case, she again identified Jovica Dejanović and Đorđe Bojković from photographs. However, in the trial, the court found that it was "not in a position to establish beyond reasonable doubt whether these witnesses have been (unintentionally) influenced as to the identity of the assailant or if their memory has been distorted by the years that have passed since the tragic event", and found that their identification of the photographs "has lost its evidential value."<sup>74</sup> Thus, on the basis of a procedural error, including by UNMIK police, and the passage of almost 13 years before the case was reopened by EULEX, both men were acquitted.<sup>75</sup>

<sup>69</sup> A letter sent to EULEX on 8 March 2012 from KWN welcomed the identification of cases of CRSV for prosecution, and urged that survivors be protected from traumatization and provided with adequate witness protection, [http://www.womensnetwork.org/images/pdf/KWN\\_1325\\_Facts\\_and\\_Fables.pdf](http://www.womensnetwork.org/images/pdf/KWN_1325_Facts_and_Fables.pdf), pp. 98-99; in 2012, Amnesty International again urged EULEX to investigate and prosecute cases of CRSV, see *Time for EULEX to Prosecute War Crimes*.

<sup>70</sup> EULEX's Human Rights Review Panel has reported that the vast majority of the complaints filed against EULEX in 2016 concern the alleged failure of EULEX Prosecutorial failures to properly investigate or a refusal to institute investigations in cases of murdered and missing persons, i.e. "enforced disappearance" cases, <http://www.hrrp.eu/docs/HRRP%20Annual%20Report%202016.pdf>. While it is not possible to directly draw conclusions related to CRSV cases, the parallels with the findings of the HRAP remain worrying.

<sup>71</sup> SBalkan Insight, "Two Serbs Acquitted of War Rape in Kosovo", 19 April 2013, <http://www.balkaninsight.com/en/article/serbs-acquitted-of-war-rapes-in-kosovo>

<sup>72</sup> Amnesty International interview with Anka Kurteshi Hajdari, HLC-Kosovo, November 2017.

<sup>73</sup> V.K. then lived outside Kosovo. HLC-Kosovo observed the case under Article 295 CC. For the trial report see, *Dëshmitarët Ende Thembra e Akilit Në Gjykimet e Profilët Të Lartë*, 1 April 2014, pp. 310-13, <http://www.hlc-rcd.org/?p=26515&lang=zh>

<sup>74</sup> V.K. was interviewed eight times by police and or prosecutors; on 10 October 1999, she had identified Jovica Dejanović from photographs shown to her by the KLA police, which V.K. said stated she had then given to the UNMIK police officer; however the UNMIK file was later found to only contain her hand-written statement. V.T. reported the rape to a KLA police officer, and was interviewed the same day and at a later date; UNMIK police took her statement on 13 October 1999, but conducted no further interviews. EULEX reopened the case with an interview on 24 August 2010, and conducted four more interviews before the trial; The court found that the first set of photographs were not shown to her "in full compliance with Article 255 of the KCCP"; the photographs could not be found, and there was no written record of her identification. On the second identification in 2012 by V.K. and other witnesses, the court also found "in accordance with correct procedures", Basic Court of Mitrovicë/Mitrovica, P.nr. 13/2013, Judgement, 17 April 2013, para.41, available at [http://www.eulex-kosovo.eu/eul/repository/docs/2013-17-04\\_BC\\_Mitro\\_-\\_D\\_B\\_-\\_Engl.pdf](http://www.eulex-kosovo.eu/eul/repository/docs/2013-17-04_BC_Mitro_-_D_B_-_Engl.pdf). For the reasoning, see especially paras. 49-154.

<sup>75</sup> Jovica Dejanović was acquitted of unauthorized weapons possession; Đorđe Bojković was convicted on that charge, and sentenced to 18 month's imprisonment, suspended for two years.

The following case, which was abandoned before the retrial could be concluded, illustrates the importance of both the special evidentiary requirements in cases of CRSV, and the crucial issue of witness protection, before during and after proceedings.

### **PROSECUTIONS FOR RAPE BROUGHT BY EULEX (2) WITNESS A.**

In May 2014, KLA member Shefki Hyseni was acquitted by a District Court of war crimes alleged to have occurred in late 1998 or early 1999, including the kidnap and rape of witness A.<sup>76</sup> In presenting her statement Witness testified by video-link; she stated that after the defendant had given her something to drink, she had passed out. When she awoke, she found blood on her body and realised that she had been raped.

The defence cast doubt on her testimony, citing – contrary to special evidentiary rules which apply in cases of CRSV – her previous sexual history, which included a relationship with the defendant.<sup>77</sup> While the court accepted she had been abducted, the defendant was nevertheless acquitted. However, in April 2016, the Appeals Court overturned the lower court's decision on the basis that it was immaterial whether the defendant and witness A had been in an intimate relationship before the event, and sent the case for retrial.

The retrial opened on 16 September 2016, but was immediately rescheduled. The EULEX prosecutor then requested that subsequent hearings be held in closed sessions, in the interests of witness protection. However, on 1 November, the court was informed that the prosecutor had withdrawn the indictment, without giving her reasons.

HLC-Kosovo, commenting on the wider failure to bring successful prosecutions in cases of CRSV concluded, “The fear of victims to testify because of the patriarchal environment, the pressure and even condemnation by the public, cannot serve as a justification for the ineffectiveness of the judicial authorities to establish the truth about the rapes in Kosovo during the war”.<sup>78</sup>

Another retrial involving CRSV is expected to start in January 2018, in a case originally prosecuted by UNMIK in 2007. Although the defendant is indicted only for murder, the explanatory text describes how the victim, believed by the defendant to be a collaborator, was allegedly raped before she was murdered.<sup>79</sup>

EULEX prosecutors inherited nine other CRSV cases from UNMIK, none of which have been prosecuted. Three cases, some of which involve multiple suspects, have been fully investigated, but no indictments have been raised, as the cases cannot be taken to trial because of the impossibility of suspects being transferred from Serbia.<sup>80</sup> International arrest warrants have been issued through UNMIK, but these will only be put into effect if the suspect is identified abroad (outside Serbia or Kosovo).<sup>81</sup> To avoid closing these cases, they have been suspended, in accordance with the Criminal Procedure Code, which provides for suspension if an indictment has not been filed within two years of opening the investigation.<sup>82</sup> The six remaining cases are being prepared for transfer to local prosecutors.<sup>83</sup> Finally, two cases have been passed to the Kosovo Police War Crimes Investigation Unit.

Prosecutors told Amnesty International, “It’s a big decision to open a case, or make the decision to get international legal assistance, and we may not get it in all cases. It depends on the witnesses’ evidence

<sup>76</sup> The alleged kidnap had been charged as an ordinary crime, and the period of statutory limitations had passed. The rape was part of a wider indictment against three defendants for war crimes against the civilian population, *The Prosecutor v. Ismet Haxha et alia*, indictment, 13 November 2013. For acquittal following the truncated retrial, see, Basic Court of Mitrovicë/Mitrovica, P. nr. 62/2016, (Judgement) [http://www.eulex-kosovo.eu/eul/repository/docs/20161111-enacting-clause\\_Haxha\\_redacted.pdf](http://www.eulex-kosovo.eu/eul/repository/docs/20161111-enacting-clause_Haxha_redacted.pdf)

<sup>77</sup> These principles prohibit questioning victims about their sexual conduct prior and subsequent to the crime, see ICTY, Rules of procedure, 96 (ii); Rule 70 of the ICC Rules of Procedure and Evidence; Special Court for Sierra Leone (SCSL) Rules of Procedure and Evidence, Rule 96, “Rules of Evidence in Cases of Sexual Assault”. With respect to the element of kidnap, it would also have been appropriate to cite, ICTY Rules of procedure, (ii), which states that, “consent shall not be allowed as a defence if the victim (a) has been subjected to or threatened with or has had reason to fear violence, duress, detention or psychological oppression”, where force, threat of force or a coercive environment undermine the victim’s ability to give voluntary and genuine consent.

<sup>78</sup> See HLC-Kosovo, *War Crimes Trials in Kosovo, 2016*, pp. 460-70. Amnesty International interview with Anka Kurteshi Hajdari, HLC-Kosovo

<sup>79</sup> Amnesty International interview with Anka Kurteshi Hajdari, HLC-Kosovo, November 2017.

<sup>80</sup> Amnesty International interviews with EULEX prosecutors, October 2017. EULEX prosecutors can continue to work on these, and any other cases initiated before 15 April 2014.

<sup>81</sup> In March 2017, 67 arrest orders or international arrest warrants for war crimes remained pending, Council of Europe, Commissioner’ for Human Rights, Memorandum on Kosovo, para. 16.

<sup>82</sup> Article 157 (1), CPC, provides that an investigation may be suspended, for reasons including, if there are circumstances which temporarily prevent the successful prosecution of the defendant. Article 159 (1), CPC, Time Limits of Investigation

<sup>83</sup> Amnesty International interviews with Matti Raatikainen, EULEX, Chief War Crime Investigator, and Claudio Pala, EULEX Chief Prosecutor, September 2017.

statement, on the corroborative evidence – there is no physical evidence. In one case, the family members would not back up the witness's statement". According to EULEX prosecutors, the witness's credibility was not in question in any of these cases, but – because of the passage of time - problems lay in establishing the identity of the perpetrator. It is relevant to note here that under international standards there should be a lower evidentiary requirement in cases of CRSV, meaning that courts should not require corroboration, additional witness testimony or physical evidence to support a victim's testimony in proving crimes of sexual violence. The testimony of a single victim is sufficient, if reliable and credible.<sup>84</sup>

## 1.3 OBSTACLES TO FUTURE JUSTICE

**"How to face the families in these cases? I am ashamed – people don't care who [the prosecutors are] – UNMIK, EULEX, us – they are looking for justice,"** Drita Hajdari, Special Prosecution Office, War Crimes Prosecutor.

In May 2014, legal amendments passed by the Kosovo Assembly, limiting the competencies of EULEX prosecutors and judges came into force, and transferred responsibility for the prosecution of the most serious crimes, including war crimes, to local counterparts in the Special Prosecution Office of the Republic of Kosovo (SPRK).<sup>85</sup> By May 2015, around 40 war crimes cases had been transferred to the SPRK.

In any event, there will be no prosecutions until suspects can be arrested: all the SPRK prosecutors can do is conduct investigations and, if there is sufficient evidence available, issue arrest warrants. But an arrest warrant is no guarantee. A survivor, H.B., told Amnesty International that two days previously, she had seen the man who raped her at a funeral in her village, *"I still cannot get myself together. He made a lot of gang rapes in my village. There were two witnesses. EULEX has issued an arrest warrant. They were biggest criminals in my village, [those] three brothers"*.

In this chapter, Amnesty International examines the inherited mistakes and new obstacles that the SPRK war crimes prosecutors face in attempting to ensure access to justice for the survivors and victims of CRSV.

### INADEQUATE DEFINITION OF WAR CRIMES OF SEXUAL VIOLENCE

**"I was tortured and ill-treated so badly; it would have been better if they had killed me". B.S.**

According to the jurisprudence of the ICTY and the International Criminal Tribunal for Rwanda (ICTR), rape and other forms of sexual violence may be considered as torture, war crimes, crimes against humanity or genocide. The Rome Statute of the International Criminal Court expressly provides that rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity may amount to war crimes or crimes against humanity.<sup>86</sup> However, the applicable law in Kosovo falls far short of international law and standards.

All indictments and prosecutions, in both Kosovo and Serbia have been brought for "War Crimes against the civilian population" under Article 142 (1) of the 1976 Criminal Code of the Socialist Federal Republic of Yugoslavia (SFRY CC), the law in force at the time of the armed conflict. In cases of CRSV, the SFRY CC is problematic in that it fails to adequately define the offence of rape, referring only to "forcible prostitution or [forcible] rape". This may lead to a failed prosecution, in requiring proof that the victim received physical injuries and/or tried to fight back. To be consistent with international human rights law and standards, the definition of rape should make reference to "force, threat of force or coercion"<sup>87</sup> to allow for the element of coercion.<sup>88</sup>

<sup>84</sup> Rule 96 (i), ICTY Rules of Procedure and Evidence; see also jurisprudence of the ICTR. For further discussion see Section 3.4 "Absence of Requirement for Corroboration", in OSCE, *Combating Impunity for Conflict-Related Sexual Violence in Bosnia and Herzegovina: Progress and Challenges, An analysis of criminal proceedings before the courts of the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District BiH between 2004 and 2014*, June 2105, <http://www.osce.org/bih/171906?download=true>

<sup>85</sup> Law No. 04/L-273, On Amending and Supplementing the Laws Related to the Mandate of the European Union Rule of Law Mission in The Republic of Kosovo, 23 April 2014, <https://www.kuvendikosoves.org/common/docs/ligiet/04-L-273%20a.pdf>. EULEX retain some residual competencies, including in cases already in progress.

<sup>86</sup> Amnesty International, *Rape and sexual Violence: Human rights law and standards in the international criminal court*, (Rape and Sexual Violence), Index: 53/001/2011, March 2011, <http://www.amnesty.org/en/library/info/IOR53/001/2011/en>

<sup>87</sup> Various kinds of coercion recognized in international law include threats of force, duress, detention, psychological oppression, abuses of power, the perpetrator's taking advantage of a coercive environment, and the perpetrator's taking advantage of a victim's incapacity to genuinely consent, Amnesty International, *Rape and Sexual Violence*, pp. 19-28.

<sup>88</sup> This is set out in the Rome Statute, Elements of the Crime, Article 7 (1) (g)-1, Crime against humanity of rape, para (2), "The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent", <http://www.iccpi.int/nr/rdonlyres/336923d8-a6ad-40ec-ad7b-45bf9de73d56/0/elementsofcrimeseng.pdf>

Article 142 does not refer to any of the other forms of CRSV set out in the Rome Statute; however, it includes the act of “torture”, which could be used in future prosecutions, as acts of rape which amount to crimes against humanity or war crimes also constitute a form of torture.<sup>89</sup>

The ICTY classified the sexual assaults which took place in Kosovo as persecution, and as a crime against humanity. However crimes against humanity are not codified in the SFRY CC.<sup>90</sup> This omission also prevents prosecutions of rape and other sexual violence which took place after the end of the armed conflict, and therefore cannot be prosecuted as war crimes, but could form the basis of an indictment for crimes against humanity.<sup>91</sup>

In 2008, Kosovo adopted a new Criminal Code, (updated and amended in 2013) which includes provisions inspired by the Rome Statute, including in the definition of rape and inclusion of other crimes of CRSV.<sup>92</sup> Significantly, Article 149 allows for the prosecution of crimes against humanity, when they are “part of a widespread or systematic attack directed against any civilian population.” Article 149 (1.7) provides, amongst other things, for the prosecution of “imprisonment or other severe deprivation of physical liberty”; torture; “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity”; the “enforced disappearance of persons” and, “other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health”.

The testimonies of survivors suggest that indictments for one or more of these acts would more accurately reflect their experience, and enable a fuller consideration of the evidence. Survivors have also told how rape did not occur in isolation, but in the context of widespread and systematic attacks against the civilian population; and could therefore, constitute crimes against humanity. This is why the application of the SFRY CC rather than the 2013 Criminal Code is problematic in the prosecution of CRSV.<sup>93</sup> Thus, Amnesty International considers that it is possible, and may be appropriate in some cases, to bring prosecutions for CRSV in Kosovo as crimes against humanity, rather than as war crimes.

## TOO FEW PROSECUTORS AND RESOURCES

In 2016 two prosecutors were appointed to a newly established War Crimes Department in the SPRK, filing their first indictment in November.<sup>94</sup> They face both old problems and new obstacles in the prosecution of war crimes, including in cases of CRSV.

Around 40 war crimes cases have already been transferred from EULEX to SPRK war crimes prosecutors, including four cases of CRSV. But, the war crimes prosecutors' caseload includes – in addition to the war crimes cases transferred from EULEX – other unrelated serious crimes, including 39 cases of organized crime and aggravated trafficking. By June 2018, when EULEX's mandate ends, an estimated 1,500 serious

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<sup>89</sup> Within the jurisdiction of the ICC, all acts of rape amounting to crimes against humanity or war crimes charged are factually and legally contiguous with the crime of torture as a war crime or a crime against humanity and could be charged as such, Amnesty International, *Rape and Sexual Violence*, pp.38-39.

<sup>90</sup> This has practical consequences for crimes committed in the context of war, or in the aftermath of war, which do not amount to a war crime; they would be investigated as an ordinary offence and therefore subject to statute of limitations. Crimes against humanity are not subject to such limitations.

<sup>91</sup> Amnesty international notes that the Specialist Chamber for Kosovo, with jurisdiction over crimes which took place between 1 January 1998 and 31 December 2000 will be able to raise indictments for Crimes against Humanity, as it, “will apply customary international law and the substantive criminal law of Kosovo insofar as it is in compliance with customary international law, both as applicable at the time the crimes were committed”, see Article 7, Temporal Jurisdiction; Article 12, Applicable Law; Article 13: Crimes against Humanity, Law No.05/L-053, On Specialist Chambers and Specialist Prosecutor's Office, <http://www.kuvendikosoves.org/common/docs/ligjet/05-L-053%20a.pdf>

<sup>92</sup> The 2008/2013 Criminal Code also includes provisions for genocide, war crimes and for command and other superiors' responsibility, crucial in the prosecution of military and civilian leaders. The Provisional Criminal Code of Kosovo (PCCK), was introduced under UNMIK Regulation No. 2003/25 in July 2003, and entered into force, on 6 April 2004. It was subsequently adopted as the Criminal Code of Kosovo by the Kosovo Assembly in November 2008; and amended in 2012, entering into force on 1 January 2013. In the 2013 Criminal Code, crimes under international law were renumbered as, Article 148: genocide, Article 149, crimes against humanity; (Articles 150 – 153): war crimes and (Article 161) command responsibility; their provisions are identical to the 2008 Criminal Code, Article 116, Article 117; Articles 118-121, Article 161 and Article 117 respectively.

<sup>93</sup> While the Kosovo Criminal Code prohibits the retroactive application of criminal law if it is detrimental to the accused, Article 15.2 of the ICCPR provides that for the trial and punishment “of any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations” Articles 2 & 3, Criminal Code; under Article 52, Constitution of Kosovo, the ICCPR, like other human rights instruments applicable in Kosovo, has priority over the provisions of domestic laws. In the BiH state court, prosecutions had been brought the BiH Criminal Code, which more fully meets international standards. However, the SFRY CC is increasingly being applied, since the 2013 ruling by the European Court for Human Rights (ECtHR) in the case of Maktouf and Damjanović v. Bosnia and Herzegovina, (2312/08) & (34179/08), ECtHR, Grand Chamber. The ECtHR ruling found that the application of the sentencing provision of the BiH Criminal Code in this case constituted a violation of Article 7 of the ECHR, which prohibits the retroactive application of criminal law if it is to the disadvantage of the accused. The ECtHR held that the court ought to have used the more lenient sentencing provisions of the SFRY CC when sentencing the defendants. See also, “We need support, not pity”, p. 20.

<sup>94</sup> Local prosecutors in the SPRK had previously conducted war crimes cases, but a specific war crimes department was established in 2015.

crimes cases, including war crimes will be handed over to Kosovo's prosecutors and judiciary.<sup>95</sup> But, without the political will, and funding for more staff and resources, it will be impossible for all the war crimes cases to be absorbed by the SPRK. HLC-Kosovo have also questioned, "How much the two prosecutors will be able to achieve what dozens of their international colleagues were unable to do".

In just under nine years, EULEX, with nine prosecutors (not all covering war crimes), six legal officers and support staff, and considerably more resources than the SPRK, completed only 38 war crimes cases.<sup>96</sup> The new war crime prosecutors lack support staff, including legal and intelligence analysts; they have no case management system and lack financial resources.

With donor assistance, the prosecutors have received a programme of training in the investigation and prosecution of CRSV, including with their counterparts at the BiH State Court, and in the use of evidence in by prosecutors and former prosecutors at the ICTY.<sup>97</sup> However, as Amnesty International's research in BiH has shown, it was only after a massive investment in both financial and human resources at the War Crimes Chamber in Sarajevo, that the court began to show results in terms of numbers, but more importantly, the quality of prosecutions.<sup>98</sup>

EULEX has encouraged local prosecutors to join the War Crimes Department in the SPRK, but despite an increased salary, applicants have refused.<sup>99</sup> In part, this is due to the nature of the caseload: as prosecutions of Serbian perpetrators appear to be on hold because of the lack of extradition, there is a perception that the majority of cases are conducted against former KLA members.<sup>100</sup> Few prosecutors (or judges) welcome the threats and intimidation that such cases attract, or having to be afforded close protection.<sup>101</sup>

## DISAPPEARING EVIDENCE

**"EULEX [...] inherited a difficult and sensitive situation, particularly in the sphere of combating serious crime: incomplete records, lost documents, uncollected witness testimony. Consequently, a large number of crimes may well continue to go unpunished",** Senator Dick Marty, report for the Parliamentary Assembly of the Council of Europe.<sup>102</sup>

When EULEX inherited 1,187 case files relating to serious crimes, including war crimes, which had not been investigated by UNMIK, Amnesty International observed that the number of cases appeared to be rather low.<sup>103</sup> Subsequently, around 500 of these cases were closed by EULEX for lack of evidence. Although many of the remaining war crimes cases involve multiple victims, given the scale and incidence of documented war crimes and crimes against humanity, this number can only represent a fraction of the crimes reported to, or received from other sources by UNMIK. As the Kosovo Police observed, "They say there were 10 – 20 thousand rapes, but there are only tens of cases on the database for prosecution". Now in 2017, questions are being asked about whether UNMIK retained certain case files, rather than transfer them to EULEX in 2008.

Prosecutor Drita Hajdari told Amnesty International, "A woman came to ask us about a case. Her family was murdered in 1999, so we contacted the KP unit led by EULEX, to ask them to reopen the case and initiate an investigation. But it was already open, and it was still with UNMIK; they are still scanning cases [to send

<sup>95</sup> Memorandum following the Commissioner's mission to Kosovo\* from 5 to 9 February 2017, Strasbourg, 10 April 2017, CommDH,( 2017) 9, para.16, <https://wcd.coe.int/ViewDoc.jsp?p=&id=2456443&Site=COE&direct=true>

<sup>96</sup> As of 28 March 2017, see "Justice for War Crimes - Enhanced Judicial Cooperation is Needed", <http://www.eulex-kosovo.eu/?page=2,27,605>

<sup>97</sup> Coordinated and funded by UN Women.

<sup>98</sup> For Amnesty International's comments in 2012, on the failure of EULEX's Monitoring, Mentoring and Advice (MMA) programme which was supposed to prepare Kosovo prosecutors in the SPO, and Kosovo judiciary, to take over the prosecution and adjudication of serious crimes, including war crimes, see *Time for EULEX to prosecute war crimes*, pp. 49-51

<sup>99</sup> DH, volunteered for the role after a failed three-month recruitment procedure, "Prosecutor Drita Hajdari is assigned to the War Crimes Department at the Special Prosecution Office", May 2016, Telegraf, <https://telegrafi.com/drita-hajdari-prokurorja-ge-theu-mitin-e-komandanteve-te-paprekshem/>

<sup>100</sup> However, according to HLC Kosovo, in trials conducted by EULEX, 60 defendants in 20 cases were Albanian, while in 22 cases, the defendants were Serbian or Kosovo Serbs; the remaining cases involved two Montenegrins, HLC, *Report on War Crimes trials in Kosovo*, 2016, p. 345, footnote 1.

<sup>101</sup> In 2015, 166 of the suspects were ethnic Albanians, usually ex-KLA members, EC, *Progress Report*, Kosovo, p. 27.

<sup>102</sup> PACE, Committee on Legal Affairs and Human Rights, Inhuman treatment of people and illicit trafficking in human organs in Kosovo, Rapporteur: Mr Dick Marty, 12 December 2010, para.11, [http://assembly.coe.int/committeedocs/2010/20101218\\_ajdoc462010provamended.pdf](http://assembly.coe.int/committeedocs/2010/20101218_ajdoc462010provamended.pdf)

<sup>103</sup> This can now be partially explained by UNMIK's failure to classify almost 2,000 missing person files as war crimes. The cases classified as serious crimes, including war crimes, were handed over in 2007, prior to EULEX's deployment, to the EU Planning Team (EUPT Kosovo), established on 10 April 2006 by the Council of the EU.

to EULEX]”. In other cases it is clear that survivors and other witnesses were never interviewed, including in some cases originally deposited with UNMIK by ICTY investigators.<sup>104</sup>

According to Kosovo Police War Crimes Investigators, in some cases, where women gave their testimonies many years ago, there is nothing on the relevant databases, or where there is, there is no indication of any suspected perpetrator.<sup>105</sup> Women’s rights activists have also asserted that UNMIK lost evidence of testimonies of rape and sexual assault that women’s groups had gathered immediately after the war.<sup>106</sup>

While the SPRK will shortly receive access to more than nine million pages of war crimes documentation from the ICTY, without additional staffing it is unlikely they will have the capacity to analyse and use this evidence.<sup>107</sup>

## INVESTIGATIVE CAPACITY

Preliminary investigations into cases of CRSV are conducted by the Kosovo Police War Crimes Investigation Unit, who work under the supervision of EULEX. The unit includes two female officers dedicated to cases of CRSV; in a small number of cases where men are the victims, male officers are appointed to the case. Some 22 cases involving allegations of rape have so far been investigated by the EULEX War Crimes Investigation Unit. At the present time, the competencies and Kosovo Police are still restricted by law, and they are required to conduct investigation only at the request of EULEX or local prosecutors. However, they do not have access to relevant case databases, held by both UNMIK and EULEX, so that investigations are often conducted on a piecemeal basis. Further obstacles to their investigations include the lack of cooperation with Serbia (discussed further below), and problems in interviewing survivor-witnesses, who they found in many cases, were unwilling to continue their case – either for personal or family reasons – or because they are disillusioned by the failure of any investigating authorities to make any progress in their cases.

Kosovo Police investigators have been trained in gender sensitivity, but it is clear from the following report that they require closer prosecutorial supervision and further training in the investigation of these serious crimes.

In September 2017, Mirlinda Sada, coordinator at Medica Gjakova told Amnesty International, “Some women had an enormous shock recently, when Kosovo Police officers went to a village near here, and knocked on the doors of women who had given testimony [in 1999] to the International Crisis Group, (ICG).<sup>108</sup> We’re not sure, but we think that the ICG had either given the files to UNMIK, or had given them to the local prosecutor who sent them to UNMIK, and I think that someone said they had found them in a drawer. The Kosovo War Crimes Police wanted to take or confirm the depositions. The women were really upset about this and worried that people would identify them as rape victims. We talked to the prosecutor, and later a nice policewoman came to our centre, and talked to the women there”.

Kosovo Police are now aware that they need to more fully cooperate with NGOs working with survivors, following a training in May 2017 by KRCT, UN Women and police and prosecutors from BiH. Kosovo Police investigators are now required to inform survivor-witnesses about the procedures involved in giving their testimony, including that they may be accompanied by a psychologist and choose whether the interview is conducted at their home, at the police station or at a centre run by NGOs working with survivors. In November 2017, a Standard Operation Procedure was being drafted, with the aim of ensuring that survivors are informed about how to access the justice system and ensure that procedures and processes, including referrals between the police and NGOs, prosecutors and other actors, including psychologists, are clearly defined.<sup>109</sup>

## LACK OF POLITICAL WILL: “NO ONE HAS BEEN INTERESTED IN GETTING JUSTICE FOR US”

The Kosovo government’s Inter-Ministerial Working Group on Dealing with the Past and Reconciliation (IMWG) has been working on a National Strategy on Transitional Justice since 2012, when they were

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<sup>104</sup> Amendments to the current evidentiary regime regulating pre-trial witness statements would significantly help in ensuring that the passing of time does not negatively affect the preservation of evidence”, see EULEX, “Justice for War Crimes - Enhanced Judicial Cooperation is Needed”, 28 March 2017, <http://www.eulex-kosovo.eu/?page=2,27,605>. As EULEX has noted, measures must be taken to ensure the preservation of evidence, as these case files are handed over, and to ensure its admissibility in future trials, Amnesty International interview, September 2017.

<sup>105</sup> Amnesty International interview with Head of Investigations and Captain Ahmeti, Kosovo Police War Crimes Unit, November 2017.

<sup>106</sup> *Kosovar Women’s Voice*, “Top Channel Examines Unpunished War-time Rape of Kosovo Women”, April 2014, <http://www.womensnetwork.org/documents/20140505102745713.pdf>

<sup>107</sup> Under a Memorandum of Understanding between the ICTY/MICT and the SPRK, announced in November 2017.

<sup>108</sup> The name of the village has not been given at the NGO’s request, in order to respect the privacy of the survivors. The ICG worked in Gjakove up until the end of Dec 1999, collecting testimonies on behalf of the ICTY, see ICG, *Reality Demands, Documenting Violations of International Humanitarian Law in Kosovo 1999*, <http://cms.crisisgroup.org/europe-central-asia/balkans/kosovo/reality-demands-documenting-violations-international-humanitarian-law-kosovo-1999>

<sup>109</sup> Amnesty International interviews with Kosovo Police War Crimes Investigation Unit, and Feride Rushiti, KRCT.

mandated to “establish a comprehensive, inclusive and gender-sensitive approach for dealing with the past in Kosovo including the last war and the transition period taking into consideration the views of victims of all communities in Kosovo”.

The IMWG’s interest in the victims of CRSV and other war crimes has been minimal; no victims’ associations, relatives of missing persons or survivors of CRSV have been included in the process. Nor did the IMWG engage at all in the process of ensuring reparations for sexual violence.<sup>110</sup> While elements of a prosecution strategy have been drafted– including by EULEX and SPRK prosecutors – for inclusion in the National Strategy the overall process is now stalled, mired in political disagreements, lacks commitment from Kosovo’s political leadership or any pressure from the EU to make progress.<sup>111</sup>

Further, the Council of Europe’s Commissioner for Human Rights has recently raised concerns about the capacity of the judiciary to address complex war crimes cases, and has strongly encouraged the Ministry of Justice to seek advice from the Venice Commission, when embarking on judicial reform. In the absence of political will, an appropriate legal framework and a judicial system lacking capacity to adjudicate cases of CRSV it is difficult to see how local prosecutors can do better than UNMIK or EULEX in bringing justice to victims of crimes under international law, including the survivors of CRSV.

## LACK OF COOPERATION AND LEGAL ASSISTANCE

**“EULEX does facilitate cooperation. When EULEX goes, it’s unavoidable but there will be a temporary dip, not a catastrophic dip, the same problems will continue. How can the two prosecutors handle all these cases? There is such a small number of [rape] cases, I’m sorry, but justice will not be rendered. There is no trust [between Kosovo and Serbia], and there cannot be any indictments in absentia. These are objective hurdles, [as well as] the practical issue of resources. The new prosecutors will be under the microscope.”** Alexandra Papadopoulou, Head of EULEX, September 2017.

The most fundamental challenge to future prosecutions of CRSV is the current impossibility of bringing cases against Kosovo Serbs or Serbian suspects living in Serbia who cannot be extradited. Further, while the Serbian Office of the War Crimes Prosecutor engages in some limited cooperation with EULEX, there is no mutual legal assistance agreement between Belgrade and Pristina. Even the limited cooperation enjoyed by EULEX will stop when EULEX leaves.<sup>112</sup>

The lack of cooperation will also limit Serbia’s prosecutions of CRSV cases. In the past Serbia prosecutors were able to interview witnesses in Kosovo, who were subsequently escorted to court in Belgrade by UNMIK, (initially with the assistance of the Humanitarian Law Centre), and later, by EULEX.<sup>113</sup> In prosecutions for CRSV, to date, the only witnesses have been Serbian or Romani women.

Chief Prosecutor at the SPRK, Reshat Millaku told Amnesty International “We are not panicking because EULEX is still here. But when EULEX leave, the OWCP will need our help on cases, especially those returned for retrial, for which we have evidence and witnesses”. While Reshat Millaku continues to lobby the Kosovo authorities, progress depends on Serbia’s recognition of Kosovo. As War Crimes Prosecutor Drita Hajdari commented, “We should have a professional rapport, but it is frustrated by politics”.<sup>114</sup>

As EULEX prepares to leave, the EU should ensure that transitional justice is added to the agenda of the high level talks related to the “normalisation” of the relationship between Serbia and Kosovo,<sup>115</sup> including to address the technical issue of mutual legal assistance.

Most recently, in November, on a visit to Belgrade, the President of the ICTY and International Residual Mechanism for Criminal Tribunals (MICT) met with the Serbian President and Prime Minister to address the lack of cooperation with the SPRK.<sup>116</sup> While the outcome of this meeting has not been made public, it suggests the momentum towards cooperation is growing.

<sup>110</sup> Serb representatives walked out early the process, apparently due to hostility, Nora Ahmetaj and Thomas Unger, *Kosovo’s Framework for Dealing With the Past at a Turning Point: Civil society review of progress towards a National Strategy on Transitional Justice*, April 2007, [http://www.impunitywatch.org/docs/Civil\\_society\\_review\\_report\\_final\\_ENG\\_8.5.pdf](http://www.impunitywatch.org/docs/Civil_society_review_report_final_ENG_8.5.pdf)

<sup>111</sup> *Balkan Transitional Justice*, “War Justice Strategy for Kosovo Undermined by Divisions”, 11 April 2017, <http://www.balkaninsight.com/en/article/war-justice-strategy-for-kosovo-undermined-by-divisions-04-10-2017>

<sup>112</sup> Kosovo has no access to regional prosecution mechanisms and agreements, such as those between Serbia and BiH.

<sup>113</sup> In 2009, for example, there was cooperation between the KP and the Serbian Ministry of Interior police, in enabling two women to testify in proceedings related to CRSV in the Special War Crimes Court in Belgrade.

<sup>114</sup> Amnesty International interviews with SPRK, September 2017.

<sup>115</sup> In 2010 the relatives of the missing from both Kosovo and Serbia called for the issue of missing persons to be added to the agenda of the high level talks at a conference organized by the International Commission for Missing Persons,

<sup>116</sup> The ICTY/MICT has also signed a Memorandum of Understanding, to formalize co-operation between ICTY / MICT and SPRK, which will give the SPRK access to over 9 million pages of war crimes documentation. The ICTY/MICT has also ICTY officials have also expressed readiness to assist SPRK, with submissions of Requests for Assistance to the ICTY from SPRK; host visits at the from Kosovo judicial

## SERBIA'S FAILURE

Serbia has overwhelmingly failed in its responsibility to bring Serbian police, paramilitaries and members of the Yugoslav Army to justice, despite the undeniable body of evidence for their criminal responsibility for rape, torture and other CRSV in Kosovo. Four prosecutions including charges of rape have been brought at the Special War Crimes Chamber in Belgrade, but only one indictment – in a case ongoing in November 2017 – has been brought against Serbian suspects; the remainder have been brought against former members of the KLA.<sup>117</sup>

Despite the conviction of senior FRY and Serbian officials at the ICTY for their superior responsibility for sexual assaults in Kosovo, none of the lower ranking police, military or government officials with command responsibility has been indicted by the Office of the War Crimes Prosecutor (OWCP). In 2012, the Humanitarian Law Centre published a dossier, presented to the OWCP, providing compelling evidence of the failure of Ljubiša Diković, Commander of the 37<sup>th</sup> Motorised Brigade in Kosovo in 1999, to prevent rape or punish the perpetrators in forces under his command. Given the climate of impunity in Serbia, it is unlikely that Ljubiša Diković, now Lieutenant-General of the Army of the Republic of Serbia, will be indicted.<sup>118</sup> In November 2017, the Office of the War Crimes Prosecutor closed an investigation into the failure of former Yugoslav Army General Dragan Živanović to prevent the murder of 118 civilians in the villages of Čuška, Pavljan, Ljubenić and Zahać; in relation to these incidents, an attempted rape in Čuška and a subsequent incident of rape and murder in nearby Peć/Peja were documented by Human Rights Watch.<sup>119</sup>

A further obstacle to the prosecution of some of the perpetrators of war crimes in Kosovo lies in the fact that the War Crimes Investigation Service (WCIS) is a component within the Ministry of Interior police, which served in Kosovo (at that time part of the Federal Republic of Yugoslavia), before and during the armed conflict; several of those officers still occupy positions within the police force. Consequently the WCIS has sometimes been less than cooperative in investigations initiated by the OWCP in cases in which Ministry of Interior police are suspected of war crimes in Kosovo. In addition, former police officers prepared to act as witnesses in criminal proceedings against their former colleagues have been subjected to threats not only from other police officers, but from members of the Witness Protection Unit.<sup>120</sup>

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authorities investigating and prosecuting war crimes, and train prosecutors and Kosova Police investigators in the use of ICTY's Electronic Disclosure System; information provided to Amnesty International by UN Women's EU funded Gender Sensitive Transitional Justice project. See also ICTY press release on President and Prosecutor visits to Serbia.

<http://www.icty.org/en/press/icty-president-judge-carmel-agius-to-pay-official-visit-to-serbia-this-week>

<http://www.icty.org/en/press/prosecutor-serge-brammertz-on-a-two-day-mission-to-belgrade>

<http://www.icty.org/en/press/president-agius-concludes-successful-visit-to-serbia>

<sup>117</sup> In a third case, following appeal, proceedings are pending retrial, but is likely that this case has been abandoned, KTRZ 1/07 Orahovac Group (Morina), 13 July 2005, [http://www.tuzilastvorz.org.rs/html\\_trz/OPTUZNICE/O\\_2005\\_07\\_13\\_ENG.pdf](http://www.tuzilastvorz.org.rs/html_trz/OPTUZNICE/O_2005_07_13_ENG.pdf)

<sup>118</sup> HLC, *File: Ljubisa Dikovic*, HlcIndexOut: 019-3173-2 Belgrade, 23 January, 2012, <http://www.hlc-rdc.org/wp-content/uploads/2012/11/Ljubisa-Dikovic-File-and-Annex.pdf>. Witness statements, including evidence accepted in proceedings at the ICTY, show how the 37th Motorized Brigade of the Yugoslav Army under Ljubiša Diković's command, provided planning and support for the incursion of police and military forces into Albanian villages, where they committed mass killings, rapes and looting. In evidence to the ICTY, witnesses testified to the rape of women (some of whom were pregnant) and girls, by 10 soldiers dressed in "red-brown camouflage uniforms". They were amongst 27 women and children transported from the village of Kozica/Kozhice, and locked in a barn in the village of Cirez/Qirez, in Srbica/Skënderaj municipality. After being raped, five of the women and girls – aged between 17 and 20 - were killed, along with three elderly Albanians, and their bodies thrown into a well, where they were found and identified in 1999. See ICTY, IT-02-54, *Prosecutor v. Slobodan Milosević*, exhibit No. P141, Xhevahira Rrahmani's witness statement and K24, Judgment in IT-05-87-T, *Prosecutor v. Milutinović et. al.*, para. 562.

<sup>119</sup> See, *Balkan Insight*, 24 November 2017, <https://www.balkaninsight.com/en/article/serbia-drops-investigation-against-army-general-for-kosovo-atrocities-11-24-2017>; Human Rights Watch, *A Village Destroyed: War Crimes in Kosovo*, October 1999, footnotes 36 and 41,, <https://www.hrw.org/reports/1999/kosovo3/>

<sup>120</sup> For further information, see Amnesty international, *Serbia: Ending impunity for crimes under international law*, pp. 10-11.

## TRIALS AND RETRIALS IN SERBIA<sup>121</sup>

At the Special War Crimes Chamber in Belgrade, only two cases involving indictments for rape have been completed.<sup>116</sup>

In September 2006, former KLA member Anton Lekaj was convicted and sentenced to 13 years' imprisonment, for war crimes including the rape of a Romani girl on 12 June 1999, at the Hotel Pashtrik in Gjakove/Đakovica after the bride (a minor) and her wedding party were abducted; he was also convicted of the rape of a Romani man on the night of 12-13 June.<sup>122</sup>

In January 2011, 16 members of a KLA unit known as the "Gjilane group" were convicted of war crimes against the civilian population.<sup>123</sup> Charges included several counts of rape and torture, including the repeated rape, inhumane treatment and violations of bodily integrity of Kosovo Serb women and of Romani women.<sup>124</sup> Two of the Kosovo Serb women (protected witnesses C1 and C2) had been abducted by members of the group from a bread queue on 17 June 1999, and according to the indictment, "subjected to torture, rapes and other acts of inhumane, humiliating and degrading treatment" by 10 men; on 23 June, they were moved elsewhere, beaten and released, on condition they leave Kosovo.<sup>125</sup> All 16 defendants were acquitted on appeal in 2013.<sup>126</sup>

Only one indictment has been brought against Serbian defendants. As of November 2017, proceedings are ongoing in a retrial after appeal in the Čuška/Qeske case, which includes the only indictment for CRSV in Kosovo issued by the OWCP against individual members of Serbian forces.<sup>127</sup> Miloško Nikolić and Srećko Popović are charged with abducting two girls on 14 May 1999, and allegedly raping one of them, G.N., who was then 13 years old. Evidence from two eye witnesses has already been heard in evidence at the ICTY. Other witnesses were heard in Peć/Pejë in July 2011, by deputy OWCP prosecutor Stanković.<sup>128</sup>

The OWCP has not raised any new indictments for war crimes in Kosovo since 2014.

## 1.4 THE PROTECTION OF VICTIM-WITNESSES

**"Some cases will never be prosecuted because the survivor is not willing to testify any more. It takes time and effort, and cases can last for ever because of the [lack of effective] scheduling"**. Amnesty International interview with EULEX officials, September 2017.

In the absence of other evidence, the outcome of prosecutions involving acts of CRSV is almost entirely dependent on the testimony of survivors. However, Kosovo's courts lack specific provisions for the protection and support of survivor-witnesses who are willing to testify.<sup>129</sup> As part of their duty to ensure that survivors have access to an effective remedy, the Kosovo authorities are therefore obliged – according to the Basic Principles – to ensure their safety, physical and psychological well-being and privacy, and avoid their re-traumatisation during proceedings.<sup>130</sup> This will require the provision of both physical and psychological

<sup>121</sup> In each case, defendants were indicted for war crimes against the civilian population, under Article 142 (1), SFRY CC.

<sup>122</sup> KTRZ 7/04 Đakovica (Lekaj), Indictment, 7 July 2005, [http://www.tuzilastvorz.org.rs/html\\_trz/OPTUZNICE/O\\_2005\\_07\\_07\\_ENG.pdf](http://www.tuzilastvorz.org.rs/html_trz/OPTUZNICE/O_2005_07_07_ENG.pdf); conviction confirmed on appeal, April 2007.

<sup>123</sup> KTRZ 16/08 Gjilane Group (Ajdari and Others), 11 August 2009, [http://www.tuzilastvorz.org.rs/upload/Indictment/Documents\\_en/2016-05/o\\_2009\\_08\\_11\\_eng.pdf](http://www.tuzilastvorz.org.rs/upload/Indictment/Documents_en/2016-05/o_2009_08_11_eng.pdf); The indictment alleged that 18 men, members of a KLA unit based in Gjilane/Gnjilane had, between June and September 1999, abducted and tortured at least 267 people, mainly Kosovo Serbs, but also Albanians and at least 13 Roma. Eighty people were allegedly murdered, 34 remained missing, and the others released.

<sup>124</sup> KTRZ 16/08, Count (7), the rape by at least five men, and murder of two women in a block of flats; (8) rape and murder of an elderly woman by at least six men in her garden; (15), the murder of 13 Roma, including the rape of women in the group; (20) forcing a father at knife point to have sex with his daughter.

<sup>125</sup> Kž 1 Po2 No. 2/13 (appeal) (Ajdari and others), HLC report of Appellate Court proceedings, 119 Kž 1 Po2 No. 2/13 (appeal) (Ajdari and others), HLC report of Appellate Court proceedings, <http://www.hlc-rdc.org/wp-content/uploads/2013/10/Gnjilane-Group-13.05.2013.pdf>; <http://www.hlc-rdc.org/wp-content/uploads/2013/10/Gnjilane-Group-14.05.2013.pdf>

<sup>126</sup> Appeal Court decision, <http://www.bg.ap.sud.rs/lt/articles/sudska-praksa-pregled-sudske-prakse-apelacionog-suda-ubeogradu/krivicono-odeljenje/ratni-zlocini/kz1-po2-2-13.html>; for commentary, HLC, <http://www.hlc-rdc.org/wp-content/uploads/2013/10/Gnjilane-Group-13.05.2013.pdf>; see also Amnesty International, *Serbia: Ending impunity for crimes under international law*, p. 24

<sup>127</sup> KTRZ 4/10 Čuška, Amended Indictment (Miladinović and others), [http://www.tuzilastvorz.org.rs/upload/Indictment/Documents\\_en/2016-05/o\\_2012\\_12\\_17\\_eng.pdf](http://www.tuzilastvorz.org.rs/upload/Indictment/Documents_en/2016-05/o_2012_12_17_eng.pdf)

<sup>128</sup> HLC, *Participation of the Humanitarian Law Centre in War Crimes Prosecutions in Serbia*, p.16, [http://www.hlc-rdc.org/wp-content/uploads/2012/06/Participation-of-the-Humanitarian-Law-Center-in-War-Crimes-Prosecutions-in-Serbia\\_eng.pdf](http://www.hlc-rdc.org/wp-content/uploads/2012/06/Participation-of-the-Humanitarian-Law-Center-in-War-Crimes-Prosecutions-in-Serbia_eng.pdf); HLC, *War Crimes Trials in Serbia*, 2016, p.73

<sup>129</sup> Since 2014, standards have been developed in a draft Action Plan for Access to Justice for survivors funded by UN Women, in conjunction with the Ministry of Justice and EULEX

<sup>130</sup> UN Basic Principles, Principle 10.

support to survivors, before, during and after proceedings,<sup>131</sup> amendments to the Criminal Procedure Code and further training of prosecutors and judiciary.

While witnesses in the two cases prosecuted by EULEX were able to testify by video-link, additional measures should be taken for those who choose to testify in person. These should include separate court entrances and separate interview rooms for witnesses and defendants, as well as safe and discreet transportation to and from the court.

The Law on Witness Protection aims to provide protection in trials including for war crimes, but its provisions are inappropriate for survivor-witnesses.<sup>132</sup> However, the Criminal Procedure Code already provides for in-court protection, if there is a “serious risk to the witness” including to their mental health. These include measures to provide anonymity, closed hearings, the temporary removal of the defendant, and a prohibition against questions that may reveal the witnesses’ identity; a prosecutor may request or a judge can order such measures as they consider necessary.<sup>133</sup>

This section of the Criminal Procedure Code should be amended to allow for the provision of both medical and psychological support during proceedings.<sup>134</sup> Further amendments are needed to ensure the protection of the rights of survivor-witnesses through adequate safeguards during examination and cross-examination, including the inclusion of special evidentiary rules specific to the prosecution of conflict-related sexual violence, as set out in for example, the rules set out by the ICTY relating to evidence in cases of sexual assault. These state that: (i) no corroboration of the victim’s testimony shall be required; (ii) consent shall not be allowed as a defence if the victim (a) has been subjected to or threatened with or has had reason to fear violence, duress, detention or psychological oppression, or (b) reasonably believed that if the victim did not submit, another might be so subjected, threatened or put in fear; (iii) before evidence of the victim’s consent is admitted, the accused shall satisfy the Trial Chamber in camera that the evidence is relevant and credible; (iv) prior sexual conduct of the victim shall not be admitted in evidence.<sup>135</sup>

Finally, both judges and prosecutors must be trained to provide them with specific expertise in gender-based violence, relevant jurisprudence and standards of international law, and in ensuring respect for survivors-witnesses and their protection from further re-traumatization.

These measures should be implemented in consultation with survivors-witnesses so that they are confident about their effectiveness.<sup>136</sup>

Evidence from Bosnia and Herzegovina has shown that improvements in witness protection and support have contributed to improvements in both the number of cases of CRSV prosecuted, and the quality of prosecutions; they have also significantly lowered the potential for re-traumatization of survivors.<sup>137</sup>

**“If they even prosecute one case, it will give women more trust”. “We have met with the prosecutor, and she is important, but it needs political will”. “We don’t even know how many cases there are; they won’t tell us”.**<sup>138</sup>

It is not too late to prosecute these crimes. More women have gained the confidence to testify. Whilst real challenges to prosecution remain, and if the current impasse between Kosovo and Serbia can be overcome, with effective witness protection and support, and through the use of documentary and other evidence,<sup>139</sup> some survivors may, even at this late stage, be afforded access to justice.

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<sup>131</sup> This is particularly relevant in cases of rape allegedly committed by former KLA members, where prosecutors have found that Albanian witnesses are not prepared to testify against other Albanians, even when a degree of witness protection is available.

<sup>132</sup> For example, formal witness protection requires proof that the witness is at risk of their life, Law on Witness Protection, <https://www.kuvendikosoves.org/common/docs/ljgjet/Law%20on%20protection%20of%20witnesses.pdf>. No witnesses have entered the witness protection scheme since 2004, reportedly due to a lack of trust of the justice system, Amnesty International, interview with EULEX prosecutors and Gender Advisor, September 2017, EULEX was then conducting an assessment of protective measures with the aim of proposing additional measures to assist witnesses/survivors.

<sup>133</sup> See in particular, Article 220, (1) 1.1; also Articles 220-228 CPC. Article 222 for example provides for examination behind an opaque shield, through image or voice-altering devices; examination elsewhere communicated to the court through CCTV, or video-taped examination before the hearing, with defence counsel present, Criminal Procedure Code of Kosovo, 2013, Chapter XIII, Protection of Injured Parties and Witnesses, <https://www.kuvendikosoves.org/common/docs/ljgjet/Criminal%20Procedure%20Code.pdf>

<sup>134</sup> See ICTY, Rules of Procedure and Evidence, Rule 34, Victims and Witnesses Section, [http://www.icty.org/x/file/Legal%20Library/Rules\\_procedure\\_evidence/IT032Rev50\\_en.pdf](http://www.icty.org/x/file/Legal%20Library/Rules_procedure_evidence/IT032Rev50_en.pdf).

<sup>135</sup> See ICTY, Rules of Procedure and Evidence, Rule 34, Victims and Witnesses Section

<sup>136</sup> For the experience of women as witnesses, or potential witnesses, in prosecutions at the ICTY, see *Facts and Fables*, pp. 85-88.

<sup>137</sup> Amnesty International, “*We need support, not pity*”, pp. 27-29. For

<sup>138</sup> Amnesty International interviews, September 2017.

<sup>139</sup> For example, reports by armed forces, local authorities and international observers, and contemporaneous documents, see “*Proving Crimes of Sexual Violence*”, in *Prosecuting Crimes of CRSV at the ICTY*, p.155-157.

# 2. THE RIGHT TO REPARATION

**“Each April, I feel anxiety and suffering - and I can’t go on without sharing it with someone, so I get help and discuss it with the psychologist. But I am gaining some kind of pride in myself, that I can go back to that place, which I never had the courage to do before, and I’m gaining self-belief and self- confidence”**

Merita

Reparation aims to repair the lives of people who have suffered violations of their human rights. While reparation cannot restore individuals to the situation they were in before, it recognises the violation against them, and aims to provide individuals with as an effective remedy as possible. It can provide them with compensation for the harm they have suffered; with health care, rehabilitation or other measures through which they can rebuild their lives. Properly tailored reparation can transform survivors’ lives.

Conflict-related sexual violence is linked to the discrimination and violence that women and girls suffer throughout their lives. The UN Special Rapporteur on Violence against Women has stated, “Adequate reparations for women cannot simply be about returning them to where they were before the individual instance of violence, but instead should strive to have a transformative potential. Reparations should aspire, to the extent possible, to subvert, instead of reinforce, pre-existing structural inequality that may be at the root causes of the violence the women experience before, during and after the conflict.”<sup>140</sup>

The right to reparation for victims of crimes under international law, including war crimes and crimes against humanity, is set out in the UN Basic Principles on the Right to a Remedy and Reparation for gross violations of international human rights law and serious violations of international humanitarian law, (Basic principles). Under international law, victims have the right to: “(a) Equal and effective access to justice; (b) Adequate, effective and prompt reparation for harm suffered.” The Basic Principles include five forms of reparation: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.<sup>141</sup>

For the vast majority of survivors, access to justice seems remote. Reparation – while it certainly has not been prompt – may be the only remedy survivors receive for the harm they have suffered. It is therefore of

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<sup>140</sup> Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, UN Doc. A/HRC/14/22, para 31, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.22.pdf>

<sup>141</sup> UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UN Basic Principles), adopted by the UN General Assembly in 2005. See, VII. Victims’ right to remedies, 11 (a) and (b) See especially, paras. 19-23, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

the utmost importance that the reparation provided to survivors is effective, appropriate and available to all, without discrimination.

Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.<sup>142</sup> Kosovo provides victims of the war with limited reparation through an administrative procedure.<sup>143</sup> This is not tied to the conviction of a perpetrator, and/or subsequent civil proceedings against him or the responsible state.<sup>144</sup> Administrative reparations are often established where the state liable for the harm is unable or unwilling to meet its obligations. They are also more victim-friendly, in providing recognition of the harm suffered without the victim having to go through an expensive and often difficult judicial procedure in the state responsible. They also provide a means through which authorities can acknowledge their failure to protect the victims.<sup>145</sup> This form of reparation differs from reparations sought by one party to the armed conflict from the other.<sup>146</sup>

## SUPPORTING THE SURVIVORS

In the 18 years since the end of the armed conflict, survivors of CRSV have not received any assistance or other benefit from successive governments in Kosovo, including UNMIK. Nor have they received any form of reparation from the Serbian government.<sup>147</sup> Any support they have received, outside of their families, has been provided by civil society, and by women's or human rights NGOs, funded by international donors, foreign governments and international nongovernmental organizations.<sup>148</sup>

These have included CPWC (no longer in existence);<sup>149</sup> Medica Kosova<sup>150</sup> and Medica Gjakova,<sup>151</sup> (both preceded and founded by the German NGO Medica Mondiale); the Kosovo Centre for the Rehabilitation of Torture Victims (KRCT), in Pristina, founded in 2004 to provide medical and psycho-social support to the victims of war-time torture and other forms of violence;<sup>152</sup> and an organization for civilian survivors of war, set up with KRCT's assistance.<sup>153</sup>

These four NGOs have provided professional counselling, medical services and other support to an estimated 1,200 survivors, enabling them to recount their trauma and help them face challenges, including the lack of appropriate and free health care; no employment or means to sustain themselves, and the stigma that prevents some from even talking to their closest family about their experience. In interviews with survivors it was clear to Amnesty International how fundamentally life-changing this support has been. However, each of these NGOs, dependent on funding from international donors, can only assist a limited

<sup>142</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by General Assembly resolution 40/34 of 29 November 1985,

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/VictimsOfCrimeAndAbuseOfPower.aspx>

<sup>143</sup> The right to reparation is set out in Article 2 (3), International Covenant on Civil and Political Rights; and Article 13, European Convention on Human Rights, both of which are directly applicable in Kosovo under Article 22, Constitution of Kosovo.

<sup>144</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. Some Kosovo Albanians have sought reparation from Serbia in civil proceedings, and have sometimes been successful, including the families of 14 women and children killed by the Scorpion paramilitary group in Podujevo/Podujeves in March 1999, see "Kosovo Victims' Families Appeal to Serbian Court", 8 April 2016, <http://www.balkaninsight.com/en/article/serbia-compensate-kosovo-albanians-for-podujevo-attack-04-08-2016>; See also, Amnesty International, *Serbia: Ending impunity for crimes under international law*, Index: EUR 70/012/2014, June 2014, pp. 39-42.

<sup>145</sup> For policy and guidance, see *Guidance Note of the Secretary General, Reparations for Conflict-Related Sexual Violence*, United Nations, June 2014, <http://www.unwomen.org/-/media/headquarters/attachments/sections/docs/2014/uns-g-guidance-note-reparations-for-conflict-related-sexual-violence-2014-en.pdf?la=en&vs=1356> UN Secretary-General, see esp. p.9.

<sup>146</sup> For reparations sought by Kosovo from Serbia, including the rights of Kosovo Albanians to pensions and property restitution, see Centre for Research Documentation and Publication, *The Right to Reparations in Kosovo*, May 2016, <http://crdp-ks.org/wp-content/uploads/2016/12/FINAL-VERSION-REPARATIONS-MAY-10-2016-1.pdf>

<sup>147</sup> Serbia excludes survivors of CRSV from qualifying as civilian victims of war.

<sup>148</sup> Even before the end of the armed conflict, NGOs from Kosovo, with their counterparts in Albania and Macedonia, (and with support from NGOs in BiH, Croatia and Serbia,) provided women and girls with free counselling and assistance in refugee camps. Two women's tents were installed by the Swedish NGO, Kvinna t Kvinna, in Cegrane Camp in Macedonia, where the Kosovo NGO Motrat Qiriazis ran activities; CPWC set up a medical centre in Tetova; and Aureola set up a woman's group in Struga, Macedonia, Rachel Wareham, *No Safe Place*, p.23 & fn.26.

<sup>149</sup> The Centre for the Protection of Women and Children (CPWC) in Pristina reported that following the armed conflict they had assisted 1,960 rape survivors, including 29 women with forced pregnancies resulting from rape, for whom they had secured abortions.

<sup>150</sup> Medica Kosova is based in Gjakova/Djakovica, and was established in August 1999 by Medica Mondiale, and registered as a local NGO in October 2003. They provide survivors with, for example, counseling, legal assistance and income-generating agricultural projects.

<sup>151</sup> Medica Gjakove, also based in Gjakova/Djakovica was established with the initial assistance and continued donor support of Medica Mondiale, a German NGO which had previously established Medica Zenica in BiH.

<sup>152</sup> Founded by Feride Rushiti, a doctor who had worked with refugees in Tirana, Albania. From 2004, KRCT has provide survivors with counselling and assistance from doctors, psychologists, social workers.

KRCT, *Annual Report*, 2005, <http://krct.org/site/images/documents/reports/annual/en/ANNUAL%20REPORT%202005.pdf>

<sup>153</sup> Most survivors at these NGO centres are Albanian, but also include some Kosovo Serbs and Roma; a women's centre in Zvečan supports survivors in the predominantly Serbian area of northern Kosovo.

number of women, leaving the majority of survivors still waiting for support. Alongside KWN, they have also been the strongest advocates for the survivors' rights to just and dignified reparation.<sup>154</sup>

In this chapter, Amnesty International briefly examines the road to reparation; compares the 2014 legal provisions against international standards and in the light of survivors' needs; and examines what remains to be done to ensure that all survivors can realise their right to reparation.

## 2.1 THE ROAD TO REPARATION

Reparation for victims of the Kosovo war was first introduced by UNMIK in December 2000, providing compensation for the families of combatants and civilians who had been killed, and including rehabilitation for those injured and disabled during the armed conflict.<sup>155</sup>

Despite calls by women's organizations for survivors of sexual violence to be included in UNMIK's regulation,<sup>156</sup> it was not until the introduction in January 2012 of "The Law on the Status and Rights of Martyrs, Invalids, Veterans, Members of the Kosovo Liberation Army, Civilian Victims of War and Their Families",<sup>157</sup> that momentum grew to ensure the right to reparation of survivors of CRSV. While the law provided financial compensation, free health care, rehabilitation and other benefits for both former combatants and civilian victims of war, survivors of CRSV were again excluded.<sup>158</sup>

Amnesty International commented at the time that that the 2012 law "discriminates catastrophically against women and girls who were raped or suffered other forms of sexual violence as a result of the armed conflict. It fails to make any provision to afford the status of civilian victim of war to these women, or provide for benefits for a person suffering mental harm, or even physical harm caused by rape or other forms of sexual violence".<sup>159</sup>

On 8 March 2012, KWN organised a demonstration calling attention to the situation of survivors of CRSV. It was entitled, "We don't want flowers. We want Legal Protection and Justice for Survivors of sexual violence during conflict".<sup>160</sup> The following day, the women's caucus of parliamentarians raised the issue in the Assembly. Thus began a year-long campaign of demonstrations, lobbying and advocacy in both Kosovo and at an international level, including to the EU, to ensure that survivors received both access to justice and would be included in amendments to the 2012 legislation.<sup>161</sup>

A draft bill was put to the parliament by allies in the Vetëvendosje (Self-Determination) party. This proposed to provide survivors with compensation, in the form of financial support, and rehabilitation including much needed health care. During the three day discussion introducing the draft bill, which was finally approved on

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<sup>154</sup> By 2001, the Kosova Women's Network (KWN), a consistent advocate for the rights of survivors, had organized an awareness raising campaign about violence against women, including wartime rape, "which aimed to empower women to find support and become survivors rather than victims", see Ilire Rizvanolli, Lauren Bean, and Nicole Farnsworth, for Kosovar Gender Studies Center, *Kosovar Civil Society Report to the United Nations On Violence against Women in Kosovo*, 2005, <http://www.un.org/womenwatch/daw/vaw/ngocontribute/Kosovar%20Gender%20Studies%20Center.pdf>, p.2.

<sup>155</sup> Reparation included compensation in the form of a pension or social benefit; free medical care for "war invalids" and their families; an element of rehabilitation; and exemption from tax on adapted vehicles, UNMIK Regulation No.2000/66 on "Benefits for War Invalids of Kosovo and for the Next of Kin of those who died as a Result of the Armed Conflict in Kosovo.", 21 December 2000, [http://www.unmikonline.org/regulations/unmikgazette/02english/E2000regs/RE2000\\_66.htm](http://www.unmikonline.org/regulations/unmikgazette/02english/E2000regs/RE2000_66.htm)

<sup>156</sup> In 2006, UN Women were unable to persuade the UN in New York to ensure that the UNMIK regulation was amended to include survivors, Amnesty International interview with UN Women, September 2016. In 2011, Medica Kosova advocated for the inclusion of survivors in the then draft (2012) law, and Kosova Women's Network published the first thorough analysis of UNMIK and EULEX's failure to prosecute war crimes of sexual violence, see *Fact and Fables*, pp.80-91.

<sup>157</sup> Law No. 04/L-054, Like the UNMIK regulation, the law prioritised the families of "martyrs", former combatants, disabled combatants and their families, providing them with pensions, health care at all levels and rehabilitation. Civilian victims of war and their families, including the relatives of missing persons disappeared by Serbian forces, were awarded a lower level of compensation and other entitlements including free health care at primary and secondary levels, <https://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20the%20status%20of%20the%20martyrs%20of%20war.pdf>. For comparative rates of compensation paid, see Donjeta Morina and Nicole Farnsworth for KWN, *Budgeting for Social Welfare, A Gender Analysis to Inform Gender Responsive Budgeting in the Ministry of Labour and Social Welfare in Kosovo for 2016-2018*, 2015, pp. 37-44, <https://www.womensnetwork.org/documents/20151203094304537.pdf>

<sup>158</sup> Much of this was informed by a report published by KWN in 2011, which documented the absence of justice for survivors of CRSV, see *1325, Facts and Fables*, pp. 80-91,

<sup>159</sup> *Kosovo: Time for EULEX to prioritize war crimes*, p. 31.

<sup>160</sup> For a chronology of events and advocacy leading up to the first reading of the bill in March 2013, see Annex 1, in UN Women, *The Conflict did not bring us Flowers, The Need for Comprehensive Reparations for Survivors of Conflict-Related Sexual Violence in Kosovo* pp. 55-57, [http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2016/the-conflict-did-not-bring-us-flowers\\_eng.pdf?la=en&vs=5055](http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2016/the-conflict-did-not-bring-us-flowers_eng.pdf?la=en&vs=5055)

<sup>161</sup> Balkan Insight "Kosovo War Rape Victims Need Legal Status", 6 December 2012, <http://www.balkaninsight.com/en/article/kosovo-war-rape-victims-need-legal-status>

14 March 2013, the culture of shame attached to wartime rape became clear.<sup>162</sup> The proposal provoked some extreme hostility, and gender-based abuse, both inside and outside the assembly.<sup>163</sup>

Several individuals and organizations advocating for the bill reported threats against them. Nazlie Bala, a lawyer, human rights activist and a member of Vetëvendosje returned home from work on 20 March to find an anonymous letter slipped under her door. The letter read, “Do not protect the shame. Otherwise we will kill you.” A week later, on 27 March 2013, Nazlie Bala was attacked and was badly beaten by at least two unknown assailants when entering her apartment building.<sup>164</sup>

On 20 March 2014 the Kosovo Assembly finally adopted the “Law on amending and supplementing the Law no. 04/L-054, on the status and the rights of the Martyrs, Invalids, Veterans, Members of Kosovo Liberation Army, “Victims of Sexual Violence in the war”,<sup>165</sup> Civilian Victims and their Families”.<sup>166</sup>

## 2.2 FALLING FAR SHORT OF INTERNATIONAL STANDARDS

The UN Basic Principles envisage reparation to be a part of the process of promoting justice for victims of crimes under international law. Reparation should be “adequate, effective and prompt” and “proportional to the gravity of the violations and the harm suffered”. While the new legislation means a step forward for survivors, Amnesty International considers that the proposed reparation measures fail to match up with their needs and with international standards.

The 2014 amendment defines “Victims of sexual violence of the war” as a “person who survived sexual abuse and rape within [the] period from 27.02.1998 until 20.06.1999”, and includes both male and female victims.<sup>167</sup> Importantly, it specifically excludes the requirement to prove physical injury or disability as a condition of eligibility.<sup>168</sup> Elsewhere, this condition has excluded the majority of survivors from compensation and other reparation.<sup>169</sup> The legislation importantly provided compensation in the form of a monthly pension, which – unlike previous provisions for other beneficiaries – “aimed at restoring the dignity of the survivor”, and uniquely created a Verification Commission to review their applications.<sup>170</sup>

The amendment also provided survivors with some of other benefits set out in the primary legislation. In effect, however, survivors were added to a list of beneficiaries, and allocated some of the benefits available to other existing beneficiaries. They were not tailored to the needs of CRSV survivors.<sup>171</sup> They include: health services abroad; access to employment in the public and private sector, through a rehabilitation programme; release from property tax; and some priority in access to housing.<sup>172</sup>

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<sup>162</sup> A transcript of the debate is available, in Albanian, [http://www.assembly-kosova.org/common/docs/proc/trans\\_s\\_2013\\_03\\_14\\_10\\_4805\\_al.pdf](http://www.assembly-kosova.org/common/docs/proc/trans_s_2013_03_14_10_4805_al.pdf)

<sup>163</sup> Balkan Insight, “Kosovo Wartime Rape Controversy Sparks Protest”, 29 March 2013, <http://www.balkaninsight.com/en/article/war-rape-issue-sparks-public-reactions>

<sup>164</sup> Amnesty International, “Urgent Action: Human Rights Defender Attacked”, 28 March 2013, UA: 79/13 Index: EUR 70/006/2013; see also Public Statement, Kosovo: “Amnesty International condemns threats to woman human rights defender”, 22 March 2013, Index: EUR 70/005/2013.

<sup>165</sup> Amnesty International translation.

<sup>166</sup> See Kosovo: “Amnesty International Calls On The Assembly To Guarantee The Rights Of Victims Of War Crimes Of Sexual Violence”, 18 March 2014, Index EUR 70/007/2014, <https://www.amnesty.org/en/documents/eur70/007/2014/en/>; Law 04/L-172, adopted 20 March 2014, promulgated by the Decree of the President of the Republic of Kosovo No.DL-011-2014, 07 April 2014, <http://www.kuvendikosoves.org/common/docs/ligjet/04-L-172%20a.pdf>.

<sup>167</sup> Article 4.6, added paragraph 1.11 Sexual violence victim of the war” to the list of definitions.

<sup>168</sup> Article 14 (2.6) “Sexual violence victims of the war shall be excluded from the degree of invalidity”;

<sup>169</sup> For example, in Serbia, civilian victims of war are required to have 50% bodily damage to qualify for an invalidity pension; monthly pensions are only awarded to families of those killing or subsequently deceased, see HLC, *The legal and institutional framework in Serbia regarding the rights and needs of civilian victims of war*, August 2017, pp.10-11 & 25-30, <http://www.hlc-rdc.org/?p=34194&lang=de>. In Republika Srpska, in BiH, all victims of war are required to provide proof of at least 60% bodily damage. For CRSV victims, most of whom suffer from conditions which are not physical in nature, this is a requirement that nearly automatically precludes them from obtaining the status of civilian victim of war and the accompanying benefits. See Amnesty International, *We need support, not pity*, p. 34.

<sup>170</sup> Article 5; the amount was to be decided by the government, Articles 2.7-2.8.

<sup>171</sup> Even as late as 19 March 2014, KWN continued to advocate for amendments to the law.

<sup>172</sup> Article 6, para.10, provided that survivors should be “beneficiaries of personal benefits foreseen by sub-paragraphs 1.5; 1.8, and paragraphs 4 and 6 of Article 6 of the Law into force. These include (a) Health services abroad: the right enjoyed by civil war invalids due to the deterioration of health conditions, [as] a consequence of the war, and for which there is no healing in our country (Article 6, sub-para 1.5); (b) Priority in employment in the public and private sector, in accordance with the Law no. 03/L-19 for training, professional rehabilitation and employment of persons with disabilities, [is] the right realized by the KLA invalids”. (Article 6, sub-para 1.8); (c) Release from property tax for beneficiaries, including the families of civilian victims of war who are in difficult economic conditions (Article 6.4); and (d). Residential care is the right realized by the martyrs families, of the KLA missing persons, KLA invalids who are in difficult economic conditions, civil war invalids and

The amended law is problematic in several other respects: it discriminates against survivors from minority communities; places a time limit on applications, and presumes against awarding a monthly compensation payment to survivors who receive other forms of financial support, including non-war related benefits, such as a retirement pension. These problems are discussed, and recommendations made, at the end of this chapter.

The UN Basic Principles, as already noted, include five forms of reparation: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Amnesty International's analysis, in comparing the provisions for survivors of sexual violence against these international standards, and against the real needs of survivors, finds that the law is very limited in its application, and provides survivors little apart from a monthly compensation payment and – by recognising them in law – with some degree of satisfaction.

## COMPENSATION

**“For 18 years now, we have lived with hidden wounds that cannot be healed, but a pension would help us survive; it would help with medication and raising children. We have heard nothing from the police, no perpetrators have been punished. [The pension] will at least help us through life with some respect”.**<sup>173</sup>

According to the UN Basic Principles, “compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as: (a) Physical or mental harm; (b) Lost opportunities, including employment, education and social benefits; (c) Material damages and loss of earnings, including loss of earning potential; (d) Moral damage; (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services”.<sup>174</sup>

The monthly pension was decided in November 2017 at €230, around 87% of the average monthly salary for women.<sup>175</sup> For survivors, this pension – along with acknowledgement of their experience – is the most tangible and probably the only form of reparation they will receive. The monthly amount will be paid directly to the survivor through a bank account, opened on their behalf, providing a regular and reliable income. Survivors have told Amnesty International of their hopes that the pension will transform their lives, not only by providing them with their own income, but by helping them with the costs of health care, reducing their dependency on their relatives and boosting their self-esteem.

**We need the pension to cover our living conditions, therapy and even food. We should not be kept by someone else, but support ourselves. To have value in our families – to contribute to the family. We all have different needs, but it makes our families' lives harder to support us. It's not easy to look after a person who is sick.**<sup>176</sup>

While some survivors receive social assistance in the form of financial support, this provision is limited.<sup>177</sup> Others rely on a war-related pension, which is rarely adequate. S.B. receives a monthly pension as the widow of a civilian victim of war. Since the break-up of her second marriage, she supports herself and her children on a monthly pension of €75. Others receive social assistance for a disabled or elderly family member: H.Z. told Amnesty International that she and her six children depend entirely on her mother-in-law's €75 monthly pension.<sup>178</sup>

However, most survivors, perhaps the majority of those who are widowed or divorced, or who have never married, rely on other family members to support them. For some, the pension will end their financial dependency, and help them feel valued, as G.L. told Amnesty International, “Before the war, we were useful to ourselves and to our families, and now we are not useful”.

Gj.S. told Amnesty International: “I was married, but when he came back after the war, his family told him immediately, and we divorced because of what happened to me. I depend on my brother, and I am always

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close families of civil war victims, for whom the Government of Kosovo will be engaged for the provision of family housing through construction of collective social housing; 6.1. Priority in the realization of the right to family housing will have martyrs' close families and those of missing persons, invalids who have not resolved the family housing.

<sup>173</sup> Amnesty International interview with G.S., September 2017.

<sup>174</sup> Basic principles, Article 20

<sup>175</sup> “230 EUR pension for sexual violence victims during war”, 16 November 2017, <http://top-channel.tv/english/230-eur-pension-for-sexual-violence-victims-during-war/>

<sup>176</sup> Amnesty International interview, F.S., September 2017.

<sup>177</sup> Eligible beneficiaries include those with dependents who are disabled, over 65, as well as parents with children under five, or are single parents with a child under 15; they should not be available for work and meet certain financial criteria, see Law No. 2003/15 On [the] Social Assistance Scheme In Kosovo, Article 2.7 and Sections 4 & 5, [https://www.kuvendikosoves.org/common/docs/ligjet/2003\\_15\\_en.pdf](https://www.kuvendikosoves.org/common/docs/ligjet/2003_15_en.pdf)

<sup>178</sup> Amnesty International interviews, September 2017.

under pressure from my sister-in-law, she watches me to see how much food I am eating. I help on the farm looking after the animals in order to eat. If I got the pension, I would have my own income.”<sup>179</sup>

For some survivors, who lost the opportunities of their youth, their aspirations are focused on their children, and on improving the life of the next generation. Many younger women told Amnesty International how they would use the monthly pension for their children’s education, like E.M. whose husband had been killed as they both fled as refugees in 1999. With her monthly widow’s pension, and support from her father, she had funded her children through secondary school, and with the pension hoped to continue their education.<sup>180</sup>

Amnesty International considers that the level of compensation provided to survivors is adequate, in its own right, in recognizing the physical and mental harm done to them and the ongoing loss, suffering and moral damage they continue to experience.

Compensation, in the form of an adequate pension is long overdue, and will be welcomed – and very much needed by survivors. However, Amnesty International is concerned at its adequacy for some survivors, in that it is the only meaningful form of reparation provided to survivors by the new legislation, as will be seen below. Crucially, and in light of the failure of the legislation to provide survivors with access to free health care, the law fails to provide any specific compensation for the costs of medicines and medical services some survivors need on a daily basis.

## RESTITUTION

**“Work will help us fulfil ourselves, and when you earn you can move forward”.**<sup>181</sup>

“Restitution should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one’s place of residence, restoration of employment and return of property.”<sup>182</sup>

Kosovo’s law does not envisage restitution of employment, livelihoods or property.<sup>183</sup> Survivors may not have had independent livelihoods, their own property or paid employment before the war, but the law does nothing to improve their situations.

While it is impossible to return the victim of a gross violation of international law to the situation they were in before the violation occurred, some of the harm can be addressed through restitution. For survivors of CRSV, this harm could include loss of housing and/or security of tenure, loss of physical health, the loss of opportunities through the interruption or ending of their education,<sup>184</sup> and loss of employment.<sup>185</sup> Others have been unable to have a family, due to physical injury or trauma; as one woman put it, “The dream of having children was gone”. Reflecting survivors’ concerns, this section looks at employment and housing, while health care is examined under rehabilitation.

**“I received a grant for the bees, and I love them. I sit in a chair in the garden and watch them, how they work. It makes me very happy. I’ve only just started with the bees, and I’m expecting honey next spring; it will be the first time that I can help with the [family] income”.**<sup>186</sup>

In Kosovo, 57% of the working age population (15-64) are either unemployed or economically inactive. Women’s access to employment is disproportionately low: only 17% of working age women and girls are employed, compared with 46.8 % of men.<sup>187</sup> Women also receive a significantly lower salary than men, with an average monthly salary of €263, as compared to €329.40. Women also lack stable employment and are disproportionately employed on three or six month temporary contracts.<sup>188</sup>

Lacking the technical or professional skills to enter the labour market, and in the absence of any specific national strategies for the economic empowerment of women, survivors’ employment opportunities are limited, particularly for those with continued ill-health.

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<sup>179</sup> Amnesty International interviews, September 2017.

<sup>180</sup> Amnesty International interview, September 2017.

<sup>181</sup> Amnesty International interview, F.A., September 2017.

<sup>182</sup> Basic Principles, Article 19.

<sup>183</sup> Article 6.4, of the amended law.

<sup>184</sup> One survivor, who was a child when she was raped; told Amnesty International that as a result, she was unable to continue her education.

<sup>185</sup> *Reparations for Conflict-related Sexual Violence*, p. 15.

<sup>186</sup> Amnesty International interview, H.K., September 2017.

<sup>187</sup> Kosovo Agency of Statistics, *Labour Force Survey, Q2 2017*, <http://ask.rks-gov.net/media/3631/labour-force-survey-q2-2017.pdf>.

<sup>188</sup> Sylvia Cleff le Divellec and Katharina Miller for KWN, *Kosovo’s Progress in Aligning Its Laws with the European Union Gender Equality Acquis*, p. 4, <http://www.womensnetwork.org/documents/20171108105226438.pdf>

Very few women interviewed by Amnesty International were formally employed. F. was a rare exception: she had been supporting her family – including two children and her mother-in law – on her husband’s €75 monthly invalidity pension, but had just started a job earning €200 a month, cleaning in a restaurant. Despite paying €50 a month in travel costs, she was delighted to have a job at last.

Time and time again, survivors told Amnesty international how important it was for them to contribute to the family budget. Employment, not only improves their lives financially, but also counters the desperate sense of dependency that so many survivors experience, and increases their sense of self-esteem, as I.F. told Amnesty International, *“I was struggling, and now I am working to benefit others. Such joy.”*

For many, employment is key to recovery: one survivor told Amnesty International, *“We need employment, we need an active life, so we can get away from the daily stress. We need economic empowerment to overcome challenges and become independent, and then we will be able to help our families”.*

In a recent survey, most survivors expressed a “desire and willingness” to work in farming or food processing, in tailoring or hairdressing, while others envisaged a small family business or independent enterprise. The law makes no provisions for these needs.<sup>189</sup> However, some saw the monthly pension as an opportunity to start their own business, like P.K., who had identified a gap in the market, and planned to use the pension to start up a cleaning service for Kosovars living abroad, who need their houses to be cleaned before they return from the diaspora twice a year.

Some survivors have already received some small scale assistance to start their own businesses, or other means to generate income, with the help of external funders. In 2017, Medica Kosovo, assisted by UN Women and KWN, have received help through a subsidy programme run by Gjakova/Dakovica municipality, which provides female-headed households and single mothers, including CRSV survivors, with the means to start agricultural income-generating work.<sup>190</sup> This programme provided H.K. (above) with the bees that bring her such joy – and a future income. Other women had received multi-cultivators,<sup>191</sup> and others greenhouses. One survivor was using the subsidy to start her own business growing hazel nuts and would, when her crop was ready, receive some assistance in marketing her produce. Another NGO has created workshop space, where survivors make clothing, jewellery and home furnishings, which they can sell in the recently opened small shop at the centre, which another survivor is employed to run.

But it is not possible that all the survivors who want to work can be supported back into employment by NGOs and external funders. Instead the government should make a commitment to ensuring women’s economic empowerment through targeted and appropriate government programmes, providing priority to survivors, rural women and other marginalised groups.

## **RESTITUTION OF PROPERTY/ACCESS TO HOUSING**

The legislation provides survivors “in difficult economic conditions”, with release from property tax. It is unlikely that this will benefit many: fewer than 20% of women own property, and only 3.8% of those inheriting property are female.<sup>192</sup> Further, with respect to the restitution of property, the vast majority of claims have now been decided.<sup>193</sup> A few survivors who lost their homes during the war have received assistance from NGOs in recovering their property, but for those without NGO support, there is no effective free legal aid system to assist them.

Few women in Kosovo own their own houses or land, and some fear that as their sons grow to adulthood and take over the family home, they may be left homeless. Older survivors living alone without family support or at risk of homelessness, need adequate alternative housing, rather than a tax exemption. The legislation provides that the Verification Commission may, on reviewing applications, decide that survivors are in need of additional benefits, so it may be appropriate for these older survivors to be provided with social housing, if they are in “difficult economic conditions”, as provided under the amended law.<sup>194</sup>

Moreover, this provision could be used to assist survivors who desperately want to leave the homes and communities where they were raped. One told Amnesty International, *“If I get the pension, I will change*

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<sup>189</sup> KRCT, *Survey: Dedicated to the identification of the needs and potentials of SCBV survivors for their participation in governance and employment opportunities in Kosovo, Findings Report*, June 2017, pp, 23 & 26-7. Interviews with survivors in September 2017 indicated similar aspirations.

<sup>190</sup> In 2017, UN Women – with EU support - provided 100 micro-grants, coupled with psychosocial support, for survivors to establish or expand small business, “In Kosovo, legal recognition of war-time sexual violence survivors after 18 years”, 19 October 2017, <http://www.unwomen.org/en/news/stories/2017/10/feature-kosovo-legal-recognition-of-war-time-sexual-violence-survivors>

<sup>191</sup> A tool with handlebars for preparing soil for cultivation.

<sup>192</sup> Reuters, “Kosovo launches drive to encourage women to claim property rights”, 20 January 2017, <http://www.reuters.com/article/us-kosovo-landrights-lawmaking/kosovo-launches-drive-to-encourage-women-to-claim-property-rights-idUSKBN154233>

<sup>193</sup> Kosovo Property Agency, *Message from the Kosovo Property Comparison and Verification Agency*, 17 January 2017, [http://www.kpaonline.org/ClaimsTotalDecided\\_caseload.asp](http://www.kpaonline.org/ClaimsTotalDecided_caseload.asp)

<sup>194</sup> Article 7 (2.8).

where I live, because I cannot live with the prejudice any longer. It is so hard to be in that place where it all happened, in the same village, in the same house.” Another was in the same position, “I want more than anything to move into another apartment. I am still living in the apartment of the Serbian man who destroyed my soul and my heart. I was only 17”.<sup>195</sup>

## REHABILITATION

**How can I heal when I have to pay for all this? I almost lost my kidneys. I have sold my land to cure myself. The doctors and physicians halved the price. It is not easy to be a heroine, as they call me.**<sup>196</sup>

Rehabilitation should include medical and psychological care as well as legal and social services.<sup>197</sup>

The right to health is guaranteed in the International Covenant on Economic, Social and Cultural Rights (ICESCR), which is not incorporated into applicable law in Kosovo.<sup>198</sup> Nevertheless, the authorities are required to meet the “minimum core obligations to ensure highest attainable standard [of health]”, set out by the UN Committee on Economic, Social and Cultural Rights.<sup>199</sup>

While these minimum core obligations apply to all persons, survivors have particular and specific needs, as recognised by the UN Secretary-General, who noted that, “Well-crafted rehabilitation measures that provide for services (such as health, education or housing) are particularly suited to help fulfil the economic and social rights of victims of conflict-related sexual violence”.<sup>200</sup> The UN Committee against Torture has specifically stated that rehabilitation should “aim to restore, to the extent possible, victims’ independence, physical, mental, social and vocational abilities and enable their full inclusion and participation in society.”<sup>201</sup> It should address the physical and psychological harm caused to the victims and should be holistic in including “medical and psychological care as well as legal and social services”.<sup>202</sup>

Yet the 2014 legislation only gives survivors the benefit of “health-care abroad”. While this entitlement may have been appropriate in the immediate post-war period, when access to professional and specialized health care was not available, it is inappropriate to the survivors’ current situation.<sup>203</sup> Other civilian victims of war are entitled to free primary and secondary level health care; former combatants and their families (including families of combatants killed in war) receive free primary, secondary and tertiary health care.<sup>204</sup> The law’s offer on health care is not only discriminatory, but ignores the most appropriate and most needed form of reparation; access to free or affordable health care.

The survivors all talk about their health; it is clearly their largest concern, 80% of the survivors at Medica Gjakova have chronic health conditions and, as S.B told Amnesty International, “None of us has health insurance, we all have to pay.” Many survivors have experienced ill-health as a result of the physical violence they experienced, with many having chronic gynaecological problems or injuries and scars from the beatings and other torture they endured. For some women these conditions continue to this day. Many of the survivors’ ongoing medical conditions are directly related to the violence they suffered. At Medica Kosova in Gjakova, three women had suffered from vaginal rupture, including one survivor who was raped when she was only 13 years old, and continue to need care. The majority of women at Medica Kosova have had hysterectomies, paid for by the NGO. Another woman, H.H. told Amnesty International that she had needed surgery four times, including two operations on her uterus and another on her spinal cord. While the surgery had been free, she had to pay €40 for the anaesthetic.

Overwhelmingly, survivors interviewed by Amnesty International had chronic health conditions, which debilitated and in some cases, dominated their daily lives. Their high levels of stress was apparent, not only in the personal information that they shared, but also in the way that many spoke, some barely audible, others visibly struggling to get their words out.

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<sup>195</sup> Amnesty international interviews with S.H (3) and G.S (1), September 2017.

<sup>196</sup> Participant at Challenging the Stigma conference, September 2017.

<sup>197</sup> Basic Principles, Art. 21.

<sup>198</sup> Women’s right to health is also guaranteed under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which is incorporated into the Constitution. Article 22 (6), Direct Applicability of International Agreements and Instruments. The Convention on the Rights of the Child – which also guarantees the right to health – is also directly applicable, Art. 22 (7). However, as Kosovo has not been recognized at the UN as a state, it is not party to these international instruments.

<sup>199</sup> “To ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups”, Committee on Economic, Social and Cultural Rights, General Comment No. 14 on the right to highest attainable standard of health, E/C.12/2000/4, para. 43 (a).

<sup>200</sup> Guidance Note of the Secretary-General, Reparations for Conflict- Related Sexual Violence, p.19.

<sup>201</sup> Committee against Torture, General Comment 3, (2012), CAT/C/GC/3, 13 December 2012, para 11.

<sup>202</sup> General Principles, Art. 21.

<sup>203</sup> One survivor told Amnesty International, that immediately after the war, “I was almost psychologically insane, under constant medical supervision. I had to go abroad for treatment”, interview September 2017.

<sup>204</sup> Article 1.6; health and physical rehabilitation; 1.7. Professional rehabilitation for disabled, who have partial ability to work.

The level of stress is seen in the high percentage of women interviewed by Amnesty International who have problems with their vision, a condition related to high blood pressure.<sup>205</sup> S.H., who had been diagnosed as 95% blind, told Amnesty International, “The first thing I’ll do when I get the pension is get a bank credit and get surgery on my eyes.”

Almost all of the women interviewed by Amnesty International, (who continue to receive some form of counselling or assistance), are still recovering from their trauma, which has left them with psychiatric or other mental health conditions, including post-traumatic stress disorder, which has reduced their sense of themselves, and manifests itself in sleeplessness, flashbacks, constant stress, anxiety, high blood pressure and other chronic conditions.

*When I started coming [to the centre] 12 or 13 years ago, I was a totally different person. If someone came to visit us, I couldn’t speak at all. The doctors and gynaecologist come here twice a week, and now I have the courage to work with the trauma. At first, we never asked each other our names, or about where we lived, but now time has passed we know and support each other; but it has not been an easy journey for me.*<sup>206</sup>

According to Namize Kajzati, who represents the Ministry of Health on the Verification Committee, it is possible to receive care from psychologists and psychiatrists within the health service, including at mental health centres. But where these are not easily accessible, many are reluctant to approach doctors at primary health centres, partially due to the stigma around mental health.<sup>207</sup> In addition, further training is needed for medical professionals in addressing the specific problems of survivors.<sup>208</sup> While over 1,200 survivors have received specialised care from NGOs, tailored to their needs, provision must be made for the survivors who have not received such support in addressing their trauma.

*I couldn’t tell anyone, I just kept it all inside of me. I closed myself up, I couldn’t hear people and I kept losing my memory - and I lost all feeling for my husband. Then one night the secrets came to an end: it was 2016, and my husband came to me and said we have to get a divorce, we are not happy, and I think you are with someone else. I swore I wasn’t, and then I told him, and he said, “I accept you, because it was the war”, but I felt he was cold, and I went to the internet and [looked up] rape in the war and I found the KRCT. I took a taxi and [the counsellor] opened the door, and I made her cry because I was just screaming. She calmed me down and I told her the whole story...I am still continuing the therapy. I was isolated all these years and now I have earned a grant to become a hairdresser.*<sup>209</sup>

For some, the therapy was more than life-changing; in some cases it has literally saved their lives. As N.T. told Amnesty International, “I’ve been receiving treatment for trauma from Medica Kosovo since 2002, I can’t describe it in words, but if it wasn’t for them, I wouldn’t be alive – I’d tried to commit suicide.”<sup>210</sup>

In the immediate aftermath of war, many women and girls reportedly committed suicide because they had been raped, and in the years that followed others have done so. Several survivors interviewed by Amnesty International told of repeated suicidal feelings, or attempts they had made to take their own lives, and the suicides of others that they knew. K.T told Amnesty International, “It was in 2004, she was 32, and under social pressure to get married, so her parents arranged a marriage. The night she got married, her parents-in-law somehow got information that she had been raped, and sent her back to her family. The pressure was so much that she jumped into the well and killed herself.”<sup>211</sup>

In theory, the 2013 Law on Health guarantees the right of every citizen in Kosovo to healthcare, but in practice this right is extremely limited.<sup>212</sup> The Law on Health Insurance provides free health care to those who have paid a premium through their employment, and to certain other groups who receive social assistance, as well as combatants and civilian victims of war, as already noted.<sup>213</sup> Those not eligible are entitled to free emergency healthcare; while children under 18 years, pregnant women and women after childbirth are provided with free essential services.<sup>213</sup>

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<sup>205</sup> The association between stress and blurred vision is well documented in the medical literature, including in the context combat stress and PTSD.

<sup>206</sup> Amnesty International interview, H.S., September 2017.

<sup>207</sup> Farnsworth, *Health Care in Kosovo*, pp. 34-5.

<sup>208</sup> Amnesty International interview, November 2017.

<sup>209</sup> Amnesty International interview, “Vera”, September 2017.

<sup>210</sup> According to KRCT, there is no statistical data on the incidence of suicide amongst survivors of CRSV

<sup>211</sup> Kosova Women’s Network, (KWN), “National Council Completes Secondary Legislation for Sexual Violence Survivors”, 30 March 2015, <http://www.womensnetwork.org/?message=true&FaqID=1&n=309>

<sup>212</sup> Law No. 04/L-249 on Health Insurance, 2014. “Essential services” are determined by the Health Insurance Fund

<sup>213</sup> Around 6% of the population have private health insurance, although not rural women, Nicole Farnsworth, Dr. Katja Goebbels and Rina Ajeti for KWN, *Access to Healthcare in Kosovo*, 2016, p. 13 & p 5, <http://www.womensnetwork.org/documents/20170206150329798.pdf>

However, even those who qualify for free health care are required to pay for medicines which are not officially listed as essential.<sup>214</sup> They also have to pay for some medical equipment and services, especially in secondary or tertiary health care. Everyone else is required to pay for everything but essential medicines, including consultations, equipment and operations. According to survivors, a visit to the doctor costs €1-2, depending on where they live; a consultation with a specialist gynaecologist costs €10. Hospitalisation costs around €40, depending on the length of time they are in hospital, plus the costs of medicines and/or equipment. S.B. told Amnesty International that while she doesn't have to pay for the dialysis she has received twice a week for the past two years, she has to pay €38 for the needles required. Another survivor told Amnesty International that the counselling she receives from Medica Kosova is free, but her blood pressure tablets cost €9.50 twice a month, on top of which she pays a further €45 a month for other medicines. Bearing in mind that many survivors are dependent on their relatives for money, the occasional assistance from NGOs to buy medicines is for some, crucial.

This is far from the affordable health care required under the ICESCR, and acts as a serious obstacle to the standard of health care which many survivors with chronic conditions need. Some survivors told Amnesty International that they would apply for the status of survivor because they thought (incorrectly) that they would receive free health care; others, more realistically, anticipated that the monthly pension would enable them to afford the medicines they need.

For rural women, who were disproportionately affected by CRSV, access to health care is difficult. Some 61% of the population live in rural communities, and survivors living in villages or isolated locations cannot easily access specialised services. While there is a primary health care centre in each of Kosovo's 38 municipalities, secondary health care is only available in one city or town within each of the seven regions; tertiary health care is only available at the main hospital in Pristina, the capital.

In rural communities, most people have to travel by car or public transport – where it is available - to reach a primary health care centre; an average journey of 40 minutes.<sup>215</sup> But in isolated rural communities, it may take several hours: a mother and daughter, interviewed by Amnesty International, described how they had to walk for an hour from where they live to reach the nearest bus stop, in order to get to the NGO centre, where they receive free treatment.<sup>216</sup>

The health of survivors was the primary motivation for T.K in establishing an NGO in a rural area which saw some of the worst abuses against civilians during the war. Having worked for three months for the Red Cross, she went on to become a family health-education trainer. From there, with the help of KRCT, within two months she had identified 37 survivors, in 13 villages, who were in need of health care. Currently, 180 women attend the centre.<sup>217</sup> After initial referrals to KRCT for therapy, they are supported by a psychologist and gynaecologist who visit the centre once a week, and – through an arrangement with a private hospital – can access free primary health care.

The 2014 legislation represents a massive failure in the obligation, under international standards, to provide adequate health care to survivors. Both the NGOs and some members of the Verification Commission interviewed by Amnesty International are acutely aware of the gravity of this omission, and propose either that the reparation law should be amended, or that survivors are included into current categories of persons eligible for free health care. Under the previous government, negotiations were underway with the Minister of Health, to include survivors. However, provisions in the Law on Health, which envisaged expanding eligibility for free health care, including to survivors of sexual violence have not been implemented due to the likely costs.<sup>218</sup>

Many survivors anticipate they will spend their compensation on healthcare they currently struggle to afford. But, under international standards, the provision of compensation for harm suffered, and the provision of healthcare as a form of rehabilitation, are entirely separate but equally important forms of reparation.

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<sup>214</sup> In accordance with recommendations by the World Health Organisation, the Ministry of Health maintains a list of essential medicines, see, *Analiza e Prodkteve te Listes Esenciale per Vitin 2013 sipas Vend dhe ABC Indikatoreve* [Product Analysis and Essential List for 2013 by Location and ABC indicators], Prishtina, 2013, at: <http://msh-ks.org/wp-content/uploads/2013/11/Lista-Esenciale-sipas-VEN-dhe-ABC-Indikatoreve.pdf>

<sup>215</sup> *Access to Healthcare in Kosovo*, p.43.

<sup>216</sup> KWN/UNFPA. *Exploratory Research on the Extent of Gender-Based Violence in Kosovo and its Impact on Women's Reproductive Health, 2008*, <https://www.womensnetwork.org/documents/20130120165614663.pdf>

<sup>217</sup> The centre building was donated by the municipality, and in 2017 was receiving support from the Swiss and US Embassies.

<sup>218</sup> Law No. 04/L-249 on Health Insurance, 2014; see, *Healthcare in Kosovo*, p. 24, footnote 38; the list includes "martyrs' close family members; veterans of war and their spouses and children; former political prisoners and their spouses and children; the close family members of civilian victims of war; victims of sexual abuse during the war, in compliance with legal provisions in force; disabled persons; and students"

## INAPPROPRIATE PROVISIONS FOR REHABILITATION

The law provides survivors with priority in employment in state institutions through a rehabilitation scheme, provided to other categories of war victims, and based on a model of physical disability, where “invalids” are considered in need of rehabilitation. But this provision is meaningless for the survivors, who are exempt from the requirement to prove physical harm or disability, and thus excluded from any form of rehabilitation, as currently defined by law.<sup>219</sup>

Amnesty International considers that the provisions for rehabilitation are grossly inadequate to the needs of survivors, and fail to meet international standards. Access to appropriate and free health care, including both medical and psychological care, should at a minimum, be provided for survivors without further delay, either through amendments to the law providing reparation or by inclusion in the Law on Health Insurance as beneficiaries of free health care.

## SATISFACTION AND GUARANTEES OF NON-REPETITION

**“We all fought without weapons, but with our morals. None of us did this from our own free will”.**<sup>220</sup>

Satisfaction and guarantees of non-repetition are largely symbolic forms of reparation, but nevertheless have importance for survivors, many of whom believe, quite correctly, that they have been neglected and marginalized by government institutions. In this context, it is clear that survivors do feel a certain degree of satisfaction in that the legislation, whatever its failings, has afforded them official acknowledgement and recognition of their wartime experience.

Both satisfaction<sup>221</sup> and non-repetition<sup>222</sup> include some very specific remedies, not all of which are directly applicable to survivors of CRSV. However, there are a number of measures which the Kosovo government could take, including to ensure “the public disclosure of the truth” about the extent and gravity of the violations experienced by women and girls in Kosovo, including that they have been acknowledged as crimes against humanity. It has also been suggested that the history of their experience of CRSV should be included in the school curriculum or other awareness raising programmes. These measures could foster a more sympathetic understanding of survivors’ experience, and assist in countering stigma, prejudice and discrimination.

Some survivors are still so concerned that they will be stigmatized that they will not claim the pension to which they are legally entitled.<sup>223</sup> A formal public apology, from the president or prime minister, (both wartime leaders) for the failure of successive governments to address their situation for so long, would also provide satisfaction. Other measures could include the involvement and recognition of survivors in the stalled Transitional Justice Strategy, (described in the previous chapter). However, the test will be in how this present government promotes – and improves - the reparation package.

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<sup>219</sup> Article 6, sub-para 1.8; [provides] “Priority in employment in the public and private sector, in accordance with the Law no. 03/L-19 for training, professional rehabilitation and employment of persons with disabilities, [and is] the right realized by the KLA invalids”. See also Article 3 of the original law, “1.8. Civilian Invalid of War - the person, whose organism [sic] has been damaged at least 40% due to a wounds received from weapons, [or] disease acquired in the camps or prisons during the recent war.”

<sup>220</sup> Amnesty International, interview with “Vera”, September 2017.

<sup>221</sup> Article 22. *Satisfaction* should include, where applicable, any or all of the following: (a) Effective measures aimed at the cessation of continuing violations; (b) Verification of the facts and full and **public disclosure of the truth** to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim’s relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations; (c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities; (d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; (e) Public apology, including acknowledgement of the facts and acceptance of responsibility; (f) Judicial and administrative sanctions against persons liable for the violations; (g) **Commemorations and tributes to the victims**; (h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.

<sup>222</sup> Article 23. *Guarantees of non-repetition* should include, where applicable, any or all of the following measures, which will also contribute to prevention: (a) Ensuring effective civilian control of military and security forces; (b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality; (c) Strengthening the independence of the judiciary; (d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders; (e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces; (f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises; (g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution; (h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.

<sup>223</sup> Amnesty International interview, Z.A, September 2017.

**“The Heroinat statue made us proud, and it gave us courage, being called heroines”. “We don’t need to wait for the politicians, we should commemorate ourselves more”.**<sup>224</sup>

During her presidency Atifete Jahjaga, one of the few public figures recognized and acknowledged by survivors for her contribution, organised a number of “commemorations and tributes”. These included the Heroinat (Heroines) memorial, in a specially designated park in the centre of Pristina, depicting a women’s face in large relief, made up of 20,000 individual medals, each depicting the head of a woman, to commemorate the contribution made by all women, including survivors, during the armed conflict. In 2015, a massive art installation called “Thinking of You” was created by the artist Alketa Xhafa-Mripa in Pristina’s main football stadium. Thousands of women and men contributed 5,000 women’s skirts and dresses which fluttered on hundreds of clothes lines, not only to recall war-time rape and honour the victims of sexual violence, but to challenge the stigma and silence.

**“There should be a voice for women where we can discuss this and help to prevent it happening to women in other countries.”**<sup>225</sup>

In addressing non-repetition, the UN Secretary-General has urged that such guarantees should be designed depending on the particular circumstances of each country in a post-conflict situation, with the aim of preventing future CRSV. In Kosovo, as will be suggested in the next chapter, there is a need to ensure that the gender-based discrimination and cultural beliefs which both fueled CRSV and allowed its victims to be stigmatized and blamed, and that continue to allow violence against women to persist in Kosovo, are addressed in both legislation and practice. And, perhaps, as a participant at the Challenging Stigma conference suggested, in the context of ensuring that the survivors’ voices are heard, they too can actively contribute towards ensuring non-repetition.

## 2.3 IMPLEMENTING THE LAW

**“...domestic laws, to the extent possible, [should] provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.”**

Basic Principles, VI. Treatment of victims, para. 10.

In early March 2014 the then President, Atifete Jahjaga established a National Council for the Survivors of Wartime Sexual Violence within the Prime Minister’s Legislative Office. She aimed to encourage survivors to come forward and ensure that they were aware of their rights, including to reparation.<sup>226</sup> The Council also brought together government representatives, NGOs working with survivors and representatives of the international community, in a body responsible for seeing the law through to its implementation.

Through the National Council, government representatives worked for the first time with NGOs, to draft proposals for the secondary legislation which would give effect to the law, by providing guidelines and a framework for the “Government Commission on [the] recognition and verification of the status of sexual violence victims of the war”. The Verification Commission had been established within the Ministry of Labour and Social Welfare (MLSW) and provided with a mandate under the 2014 amendments, which had also established a deadline for the receipt of applications, five years from the start of the Commission’s work.<sup>227</sup>

In a three-day meeting, in March 2015, facilitated by UN Women and with the advice from Bosnian NGOs, and attended by survivors, the Council identified mechanisms for the recognition and verification of the status of survivors of CRSV, and drafted an application procedure and review process, based on international

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<sup>224</sup> Participants at the Challenging Stigma conference, September 2017.

<sup>225</sup> Participant at the Challenging Stigma conference, September 2017.

<sup>226</sup> The president visited survivors, sponsored a film to be shown to survivors aware of their rights KWN, “National Council on Survivors of Sexual Violence during the War Presents its Work”, 1 April 2016, <http://www.womensnetwork.org/?FaqeID=1&n=429>; “National Council on Survivors of Sexual Violence during the War Prepares Awareness Campaign”, 4 May 2015, <http://www.womensnetwork.org/?FaqeID=1&n=315>

<sup>227</sup> Article 9 Article 16 of the basic Law, after paragraph 4 there shall be added two new paragraphs as following: 4.a. for sexual violence victims of the war, the deadline according to this Law shall be five (5) years; 4.b. the deadline to submit the request, on realization of the rights in pensions and benefits, defined by this Law, for sexual violence victims of the war shall be five (5) years, from the beginning and making official the work of the Government Commission on recognition and verification of the status of sexual violence victims of the war

standards,<sup>228</sup> including best practice from the region, which aimed to fully respect the survivors, guarantee their anonymity, and protect information recorded by the Verification Commission.<sup>229</sup>

The application process – based on best practice - does not require survivors to testify in front of the Commission. Instead, survivors can either apply direct to the Commission by letter or online; through MLSW representatives in seven regional centers; or through the four NGOs working with survivors. The Verification Commission will then consider the applicants' eligibility for the status of "Victim of war time sexual violence" on the basis of their applications and any documentation which the survivor chooses – although it is not obligatory – to submit as evidence.<sup>230</sup> The Chair of the Verification Commission expected most applications to come through the NGOs, "for they have kept the survivors hopes alive".

In February 2016, the government finally approved the regulation providing the operational framework for the Verification Commission.<sup>231</sup> However, the Verification Commission was not established until May 2017, and only at the prompting of NGOs frustrated by the delay in implementation.<sup>232</sup> The Verification Commission comprises seven women and two men, selected by panels which included an NGO representative. Five represent the government – including the chair, representing MLSW, the Ministries of Justice and Health, the Institute for War Crimes and the Office of the Prime Minister; three professionals - a gender equality lawyer, a psychiatrist and a clinical psychologist – complete the commission.<sup>233</sup>

The commission held its first informal meeting in May, but further implementation was delayed by snap elections on 11 June. After 9 September, when a government was finally formed, commission members and MLSW representatives received mandatory training in the methodology adopted, data protection and confidentiality.<sup>234</sup> Minire Begaj, chair of the Commission told Amnesty International, "If we don't protect them – we will have failed in our purpose to acknowledge the survivors".<sup>235</sup>

In November 2017, the Minister of Finance allocated €1 million from the 2018 budget, covering the work of the Verification Commission in their administration and consideration of applications for survivor status, and the expected payments to the beneficiaries. The Minister remains concerned that precise information about the number of applicants was not available, (and from experience elsewhere in the region, this will remain the case until survivors actually apply).<sup>236</sup> Later in November, the level of compensation was decided at €230 per month. Survivors will finally be able to apply for their official status from January 2018.

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<sup>228</sup> KWN, "National Council Completes Secondary Legislation for Sexual Violence Survivors", 30 March 2015; The Commission relied heavily on Sara Ferro Ribeiro and Danaé van der Straten Ponthoz on behalf of the UK Foreign & Commonwealth Office, *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict*, for reparation, see pp.75- 82 (2<sup>nd</sup> Edition, 2017), <http://www.womensnetwork.org/?FaqlD=1&n=309>; [https://iici.global/0.5/wp-content/uploads/2017/08/International\\_Protocol\\_2017\\_2nd\\_Edition.pdf](https://iici.global/0.5/wp-content/uploads/2017/08/International_Protocol_2017_2nd_Edition.pdf)

<sup>229</sup> Reflecting survivors' fears that they would be publicly identified, the law provided for the "Protection of data of the persons who have survived sexual abuse and rape". In a further measure to protect survivors' identities, information provided in the applications will not be shared with prosecutorial authorities.

<sup>230</sup> Article 21, Regulation no. 22/2015

<sup>231</sup> Regulation no. 22/2015, "On Defining the Procedures for Recognition and Verification of the Status of Sexual Violence Victims during the Kosovo Liberation War", approved on 30.12.2015, [http://kryeministri.ks.net/repository/docs/Rregullore\\_\(QRK\)\\_nr\\_222015\\_per\\_percaktimin\\_e\\_procedurave\\_per\\_njohjen\\_dhe\\_verifikimin\\_e\\_statusit\\_te\\_viktimit\\_ave\\_te\\_dhunes\\_seksuale\\_gjate\\_luftes\\_.pdf](http://kryeministri.ks.net/repository/docs/Rregullore_(QRK)_nr_222015_per_percaktimin_e_procedurave_per_njohjen_dhe_verifikimin_e_statusit_te_viktimit_ave_te_dhunes_seksuale_gjate_luftes_.pdf)

<sup>232</sup> KWN, "Women's organizations write to the Prime Minister on the establishment of a Government Commission on the Recognition and Verification of the Status of Survivors of Sexual Violence during the Kosovo Liberation War", 3 May 2017, <http://www.womensnetwork.org/?FaqlD=1&n=517>

<sup>233</sup> Informal Meeting of the Government Commission on the Recognition and Verification of the Status of Violent Persons during the Kosovo Liberation War, 17 May 2017, <http://mpms.rks-gov.net/News/PublicationNews/tabid/134/articleType/ArticleView/articleId/4170/language/en-US/Informal-Meeting-of-the-Government-Commission-on-the-Recognition-and-Verification-of-the-Status-of-Violent-Persons-during-the-Kosovo-Liberation-War.aspx>

<sup>234</sup> Article 9.1, Regulation no. 22/2015, All those involved in the process - the secretariat, Commission and NGOs, MLSW representatives – are required to sign a declaration of confidentiality, so that all data, from the application to the final "declaration of the right" - is protected. A breach of confidentiality constitutes a criminal offence.

<sup>235</sup> Training was ongoing, technical issues being finalized, guidelines being approved; and a list of services and information for applicants were still going through the Commission in September 2017, Amnesty International interview with Minire Begaj, September 2017.

<sup>236</sup> Amnesty International interview, Minister of Finance, November 2017. On 26 October, the Minister announced that funds would be allocated from the 2018 budget, although the amount was not revealed, <http://www.koha.net/arberi/53407/hamza-perfshin-viktimit-e-dhunes-seksuale-ne-buxhetin-e-vitit-2018/>; The minister had previously called for this information to be provided before the verification process could start, <http://www.koha.net/arberi/46072/qeveria-kerkon-qe-verifikimi-i-viktimitave-te-dhunes-seksuale-te-kryhet-per-5-muaj/>. Concerns about the cost of compensation arise from pressure to reform the compensation system, exerted by the International Monetary Fund (IMF), due to the spiraling costs of payment to 28,000 war veterans, originally budgeted at €38 million for 2017; the total budget for payments to victims of war was in 2016 estimated at €100 million, *Balkan Insight*, "Kosovo Faces Up to War Veterans Pension Cost", 12 December 2016, <http://www.balkaninsight.com/en/article/kosovo-amending-the-law-on-war-veterans-12-09-2016>

## 2.4 OUTSTANDING CONCERNS

### DISCRIMINATION AGAINST SURVIVORS FROM MINORITY COMMUNITIES

The law discriminates against some survivors, ostensibly through a temporal limitation – but in reality, on the basis of ethnicity, by restricting eligibility to those who were raped or suffered other CRSV between 27 February 1998 and 20 June 1999, (the end of the international armed conflict). This excludes most Kosovo Serb women and girls, and Roma, Ashkali and Egyptian women and girls, who were predominantly raped after the end of the war, as well as some Kosovo Albanian women, perceived to have been disloyal to the KLA.<sup>237</sup> This provision has been criticized by both Kosovo Albanian and Kosovo Serb NGOs working with survivors.<sup>238</sup> It contravenes the Basic Principles which stress that “the principles of reparation must be applied without any discrimination of any kind or on any ground, without exception”.<sup>239</sup> Amnesty International urges that this temporal limitation is amended as soon as possible.

### THE FIVE YEAR LIMIT ON APPLICATIONS

*“Reparation processes must allow women and girls to come forward when they are ready. They should not be excluded if they fail to do so within a prescribed time period. Support structures are needed to assist women and girls in the process of speaking out and claiming reparation”,* Nairobi Declaration.<sup>240</sup>

The law sets out a five-year limit for the submission of applications, contravening the Basic Principles which state that access to administrative reparation programmes should not be unduly time restricted.<sup>241</sup>

Amnesty International found in September 2017, that only a minority were certain that they would apply; others told Amnesty International that they had not yet made up their minds, and would wait to see how the process went for others; or needed to find a way of explaining to their families where their sudden income had come from. An individual’s decision to apply may take many years, while many may never apply because of family pressure. Others will not apply until the stigma attached to survivors is overcome and they no longer face discrimination and prejudice. This process will certainly take longer than five years.

Initially, only the minority of survivors who have received psychosocial support or who have sufficient confidence will apply. The time-limit may discriminate against male survivors, only a few of whom have as yet identified themselves, or received counselling, and face specific risks in coming forward.<sup>242</sup>

Further, survivors have been identified as amongst the most socially excluded groups in Kosovo, and – particularly in rural areas – are unlikely to be aware of their entitlement.<sup>243</sup> While NGOs are already working to raise awareness; the Basic Principles clearly state that the responsibility to inform survivors of their rights should be undertaken by the government.<sup>244</sup>

Experience elsewhere in the region has shown that it takes years for survivors to apply. In BiH, laws providing survivors with reparation were introduced in the Federation in 1999, in Republika Srpska in 1993, (with a cut-off date for applications of 2107), and Brčko District in 2015.<sup>245</sup> Despite the widespread and systematic CRSV over four years of war in BiH, with an estimated 20,000 victims of CRSV, by 2017 just over

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<sup>237</sup> By contrast, the Law on Missing Persons includes the families of missing civilians who were disappeared or abducted between 1 January 1998 and 31 December 2000, including the families of Serbs and other minorities who were predominantly abducted in the months that followed the war, The Law on Missing Persons (No.04/L-023), Article 1, <https://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20missing%20persons.pdf>; Kosovo Serbs receive 13% of the annual budget for the pension for “Civilian Missing People”, see Morina & Farnsworth, *Budgeting for Social Welfare*, p.42,

<sup>238</sup> See, Balkan Insight, “The Enduring Agony of Wartime Rape in Kosovo”, <http://www.balkaninsight.com/en/article/agony-of-wartime-rape-victims-endures-in-kosovo-05-28-2017-1>, Nor are there any minority representatives on the Commission.

<sup>239</sup> Basic Principles, Article 25. The application and interpretation of these Basic Principles and Guidelines must be consistent with international human rights law and international humanitarian law and be without any discrimination of any kind or on any ground, without exception.

<sup>240</sup> Nairobi Declaration on Women’s and Girls’ Right to a Remedy and Reparation, 2007, section G, [http://www.fidh.org/IMG/pdf/NAIROBI\\_DECLARATIONeng.pdf](http://www.fidh.org/IMG/pdf/NAIROBI_DECLARATIONeng.pdf)

<sup>241</sup> Basic Principles, IV, 7, “...time limitations applicable to civil claims and other procedures, should not be unduly restrictive”.

<sup>242</sup> For two separate accounts by survivors of a brother’s rape and torture, see, “I want to be heard”, pp. 82 & 113.

<sup>243</sup> For social exclusion, see KRCT, *Survey*. In July 2017, the Centre for Promotion of Women’s Rights (CPWR) and the Pristina-based Centre for Promotion of a Healthy Family (CPHF) began a programme to raise awareness of the law in several municipalities, and to advocate for the economic empowerment of survivors, KWN, “CPWR & CPHF Advocate for the Rights of Women Survivors of Sexual Violence During the War in Kosovo”, 1 August 2017, <http://www.womensnetwork.org/?FaqlD=1&n=551>

<sup>244</sup> Basic Principles, 24. States should develop means of informing the general public and, in particular, victims [...] of the rights and remedies addressed by these Basic Principles and Guidelines and of all available legal, medical, psychological, social, administrative and all other services to which victims may have a right of access.

<sup>245</sup> Law on the basis of social protection, protection of civilian victims of war and families with children of FBiH, Official Gazette of FBiH nos. 36/99, 54/04, 39/06, 10/16; Law on protection of civilian victims of war of RS, Official Gazette of RS, nos. 25/93, 32/94, 37/07, 60/07, where most survivors receive reparation on the basis of torture, rather than CRSV; Decision on the Protection of Civilian Victims of War of Brčko District, Official Gazette of Brčko District, 33/2012 and amended by 15/2015.

800 survivors have received reparation, the majority in the Federation.<sup>246</sup> In Croatia, where reparation became available in 2015, only 105 applications have been received from an estimated 2,200 survivors.<sup>247</sup>

While Amnesty International understand the budgetary pressures which have informed the time limit, the organization recommends that, pending an evaluation of the number of applications after, for example, three years, the limit should either be extended or abandoned.

### **NO INDIVIDUAL PENSION FOR HARM DONE.**

*The legal framework basically supplements the “heroes and martyrs law”. The law is very male, and it did not foresee women, apart from the families of the missing.*<sup>248</sup>

Article 5 of the law prohibits any beneficiary from receiving more than one pension.<sup>249</sup> This means that a survivor of rape or other CRSV who receives another war-related social benefit or pension is not eligible to receive both. She will have to choose which benefit she wants to receive. Those who chose to apply for the status of survivor will have to give up an existing pension. For example, a woman who receives a carer’s allowance for a “war-invalid”, or receives compensation as a civilian victim of war, as a close relative of a missing person, would not be entitled to compensation in the form of a pension, for harm that was done to her.<sup>250</sup>

This prohibition also applies to those eligible for social payments, such as the retirement pension which everyone in Kosovo is entitled to receive at the age of 65. In September 2017, Amnesty International met with relatives of missing persons, including a woman whose son was disappeared by Serb forces in 1999; his body has never been found, and she has no idea of his fate or whereabouts.<sup>251</sup> As the relative of a missing person, she is defined as a civilian victim of war, and consequently receives reparation for the loss of her son, in the form of a monthly compensation payment. In May 2017, at the age of 65, having worked and paid into the contributory pension scheme for 30 years, she applied for her pension at the local social welfare centre.<sup>252</sup> With tears in her eyes, she told Amnesty International, “The woman asked me which pension I wanted. I was really sad and said I wanted both, I had worked for 30 years for my family; the pension belonged to me. But I chose to keep the other pension, for the loss of my son. It is my right”.<sup>253</sup> A man whose brother and father were also disappeared confirmed that his mother had also been forced to choose between receiving compensation as a civilian victim of war, or receiving her retirement pension.

A pension that is a right related to past employment or age should not be confused with a compensation payment, for harm done.<sup>254</sup> It should not be means-tested and should be treated entirely separately to any other form of pension or social benefits. The principle remains that civilian victims of war should receive an appropriate remedy for each harm that has been done to them.

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<sup>246</sup> Amnesty International, “We need support, not pity”, pp. 12 and 34-36.

<sup>247</sup> UNDP, “Croatia: Delivering justice for victims of sexual violence in war”, <http://www.eurasia.undp.org/content/rbec/en/home/ourwork/democratic-governance-and-peacebuilding/successstories/croatia--delivering-justice-for-victims-of-sexual-violence-in-wa.html>

<sup>248</sup> Amnesty International interview with Minire Begaj, September 2017.

<sup>249</sup> Article 5 (1.4). The beneficiaries of pensions under paragraph 1.1, 1.2 and 1.3 of this Article, may not be the beneficiaries of any other pension from other pension scheme applicable in Kosovo, unless otherwise defined in this Law.

<sup>250</sup> For further discussion of this issue, see Linda Popić with Belma Panjeta, *Compensation, transitional justice and conditional international credit in Bosnia and Herzegovina. Attempts to reform government payments to victims and veterans of the 1992-1995 war*, June 2010, [http://www.justice-report.com/en/file/show/Documents/Publications/Linda\\_Popic\\_ENG.pdf](http://www.justice-report.com/en/file/show/Documents/Publications/Linda_Popic_ENG.pdf)

<sup>251</sup> The European Court of Human Rights has ruled that a state’s continued failure to investigate cases of persons missing following a military intervention [...], resulted in a continuing violation of the prohibition against torture and other ill-treatment set out in Article 3 of the ECHR, and that “the silence of the authorities [...] in the face of the real concerns of the relatives of the missing persons attained a level of severity which can only be categorized as inhuman treatment within the meaning of Article 3”, *Cyprus v Turkey*, (10 May 2001), Judgment of the European Court of Human Rights, paras. 136 and 156-158.

<sup>252</sup> Law No. 04/L-101 on Pension Funds of Kosovo defines “Basic Pension” as “a Pension paid by the Pension Administration to permanent residents of Kosovo and who have reached Pension Age.” All citizens over age 65 are eligible for this pension. The contributory pension is available to those who paid an additional contribution throughout their working life, see *Gender Sensitive Budgeting*, pp. 11-13.

<sup>253</sup> Amnesty International interview, September 2017.

<sup>254</sup> Amnesty International notes that under a project to redraft the regulation on the institutional pension scheme it has been proposed that each “war category” should be entitled to both a personal and secondary pension, Amnesty International interview with Minire Begaj, September 2017. This may be hard to achieve in Kosovo, which like other post-conflict countries has limited resources, and budgets heavily dependent on loans from international financial institutions, that are typically averse to social transfers

# 3. ENDING THE STIGMA

**“Only one of my sisters knows – I felt I should tell her, but when my husband got back from the war, I tried to discuss how he saw the issue. He said that [rape] had only happened to immoral women. So I saw there was no hope to tell him, and I kept this secret until 2016.”**

Merita

When welcoming the law granting them recognition and compensation in 2014, survivors called for “comprehensive support to fight the stigma and culture of shame and silence that continues to surround the issue”.<sup>255</sup>

The stigma attached to the wartime rape of Kosovo Albanian women is in part an intended consequence of the campaign of persecution by FRY and Serbian forces; it is also the product of a culture of shame generated by unequal gender relations, which condemns those, especially women, who are perceived to have broken social norms. It affects not just the individual, but her or his closest family, and extending into the whole community. It destroys the survivor’s self-esteem. It may prevent them from seeking medical, psychosocial or other support they need. It has prevented many from reporting the violence they experienced to the authorities, and will prevent others from applying for the status of survivor.

Stigma has torn families apart; many women have been divorced after telling their husband; a son told his mother that she was dead to him, after finding out that she had been raped.<sup>256</sup> It is hard for children to deal with the knowledge that their mother was raped; and hard for mothers to witness their daughters being raped. Sometimes it can affect whole families. “Lola”, who had been raped, recounted how her brother came to their mother and told her that he was going to divorce his wife because she had been raped. She reminded him gently that he too had been raped while in detention, and then his mother told him that she too had been raped. Sometime later, he divorced his wife.<sup>257</sup>

**You need to have the courage to tell your husband, then gradually you can tell your children, and the rest of your family, and then slowly people will understand you.**<sup>258</sup>

In September 2016, KCRT with the support of the British Embassy, organized a conference on *Addressing [the] stigma surrounding the survivors of sexual violence during the war in Kosovo*. It brought together government representatives, NGOs, community leaders, journalists and a Croatian NGO, with the aim of identifying strategies to build support for changing the culture of shame and silence that continues to

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<sup>255</sup> UN Women, “Reparations soon for conflict-related sexual violence survivors in Kosovo”\*, 17 March 2016, <http://www.unwomen.org/en/news/stories/2016/3/reparations-soon-for-conflict-related-sexual-violence-survivors-in-kosovo>

<sup>256</sup> Amnesty International interview, September 2017.

<sup>257</sup> KRCT interview with “Lola” in, “*I want to be heard*”, pp.75-83, edited extract from p. 82.

<sup>258</sup> Amnesty International interview, September 2017.

dominate some survivor's lives. A second conference on the same theme was organised in September 2017, in response to survivors' requests, and with their participation.

These conferences are supported by the UK's Foreign and Commonwealth Office, as part of the Preventing Sexual Violence Initiative (PSVI), which arose from the Global Summit to End Sexual Violence, held in London in 2014, and attended by Kosovo's former President Atifete Jahjaga.<sup>259</sup> Some of the key recommendations from the two conferences held in Pristina are included in Amnesty International's own recommendations to the Kosovo government.<sup>260</sup>

## **“This stigma is killing us on every level”**

Survivor at the challenging stigma conference, 2017.

*“Stigma kills: it is possible to survive sexual violence, but not survive the ensuing ostracism, abandonment, poverty, ‘honour crimes’, trauma that can lead to suicide or self-harm, unsafe pregnancies, and untreated medical conditions, that may result. There needs to be a heightened sense of urgency about fighting stigma because rape survivors are literally dying of shame.”* Office of the UN SRSG on Sexual Violence.<sup>261</sup>

Social acceptance may be understood as a form of reparation, in situations “when violations affect social or community values, as with sexual violence”, where “victims may be blamed for violations they suffered, adding to the consequences for victims (and their children, if any)”, and “where individual reparations do not address the biases or prejudices that have affected victims”.<sup>262</sup>

In rural areas seriously affected by the war, and where a large number of women were raped or otherwise sexually assaulted, the stigma is strong. Even a municipal representative who had ensured financial support to a local centre had received abuse from other men asking him, “*Where were you in the war? Were you unable to protect the dignity of your family?*”<sup>263</sup>

Survivors could not over-estimate the need for their family's acceptance: one woman told KRCT how important her husband's support was; he had seen her being taken away, and had been unable to help; he told her that now he could do nothing other than support her. Others, widowed or divorced as a consequence of war emphasised the importance of their children's support.<sup>264</sup>

## **“This is not something we wanted, it was violent, it happened by force.”**

Fatmire

In their search for social acceptance, survivors have called for a programme to raise awareness and acknowledgement of the trauma they had gone through, both within their own communities and across Kosovo community. In this context Amnesty International notes that Kosovo's National Action Plan for the implementation of UN Security Council Resolution 1325 on Women, Peace and Security,<sup>265</sup> includes, amongst other obligations, to “Enhance society's attention to and the commitment of institutions in mitigating the consequences of the war in Kosovo”.<sup>266</sup> Stigma and social exclusion are certainly amongst those consequences.

<sup>259</sup> PSVI recently launched the Launch of the Principles for Global Action on tackling the stigma of sexual violence, quoted in this report.

<sup>260</sup> KRCT, *Workshop report, Breaking the stigma surrounding survivors of sexual violence during the war in Kosovo*, 2016; a report on the second conference area is not yet available.

<sup>261</sup> Principles for Global Action, *Preventing and Addressing Stigma Associated With Conflict-Related Sexual Violence*, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/645636/PSVI\\_Principles\\_for\\_Global\\_Action.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/645636/PSVI_Principles_for_Global_Action.pdf)

<sup>262</sup> Cristián Correa, “Getting to full restitution”, ICTJ Briefing, April 2017, <https://www.ictj.org/publication/full-restitution-reparations-sexual-violence>.

<sup>263</sup> Amnesty International interview, September 2017.

<sup>264</sup> Amnesty International Interviews with survivors, September 2017.

<sup>265</sup> The resolution seeks to ensure women's involvement of in all aspects of conflict prevention, conflict resolution, and post-conflict rebuilding.

<sup>266</sup> Qeveria e Republikës së Kosovës miraton Planin e Veprimit për Zbatimin e Rezolutës 1325 “Gratë, Paqja, dhe Siguria”, 31 January 2014; for summary in English see, KWN, “Government Approves 1325 Action Plan”, 6 February 2014, <http://www.womensnetwork.org/?FaqlID=1&n=151>

This is the responsibility of those with power and influence, including the government, politicians, community and religious leaders,<sup>267</sup> and should be extended to include medical professionals, police,<sup>268</sup> teachers, responsible journalists and broadcasters.<sup>269</sup>

## 3.1 AN OBSTACLE TO REPARATION

*“Rape has a specific effect on the survivor, and her relationship with her community. Even the survivors are ready to find themselves guilty”.*<sup>270</sup>

In June 2014, Amnesty International published a series of recommendations to states attending the Global Summit to End Sexual Violence.<sup>271</sup> Amongst those recommendations was that authorities should address the causes and consequences of the stigma associated with sexual and gender-based violence, as part of their obligations to prevent and punish, and to ensure that survivors can access justice, truth and reparation.

Stigma is not only imposed on survivors by others, it is internalized by survivors. But, on having their experience recognized through the introduction of the law, many survivors reflected that they would no longer feel that they had committed an offence, and that their shame, guilt and stigma would be removed.<sup>272</sup>

For others it may take longer: despite the measures taken to ensure that confidentiality and anonymity are guaranteed in the verification of applications, some survivors are reluctant to apply for reparation, as they still fear it would lead to their being identified - through social or community networks or through social media – and that someone in their family or community would find out. Others feared being identified in the bank, when an account is opened for them to receive their pension, or at the local social welfare centre.

It is particularly difficult for survivors who have never told their families about the violations they experienced, and don't know how they can explain where the sudden increase in their income has come from.<sup>273</sup> Some fear that their husband might divorce them, whilst others have already been told by their families not to apply, because of the disgrace it would bring on the family.<sup>274</sup>

The Kosovo authorities should implement measures that address the gender discrimination which contributed to CRSV, and continues to stigmatize and silence survivors. They should promote women's human rights, including through initiatives such as programmes in schools and for the public that challenge the stigma and discrimination against rape survivors in society and help to break the cycles of victimization and disempowerment of women and girls.<sup>275</sup>

### RESTORATIVE JUSTICE

“Restorative approaches to justice are significant too, not only because they involve a greater number of people but because they entail remembering, commemoration and public staging of suffering and loss”.<sup>276</sup>

Justice will not be delivered to the vast majority of women who suffered CRSV. Whilst survivors have until now, placed their hopes in retributive justice mechanisms, women's NGOs working with survivors across the region have begun to develop a restorative justice mechanism, the Women's Court for the former Yugoslavia.<sup>277</sup> The Women's Court provides a forum for survivors to publicly share their testimonies and receive a symbolic form of recognition of the crimes committed against them. Over 30 women testified to a

<sup>267</sup> A representative of Kosovo's Islamic community at the conference urged survivors to believe “It was not our will and we should not blame ourselves. We did not choose this by will, it just happened to us”.

<sup>268</sup> One survivor remarked that even police and medical professionals seemed to be unaware that of the effect of trauma on their health.

<sup>269</sup> Serbeze Haxhijaj, was awarded the Journalism Poverty Prize by the UN Kosovo Team and the Association of Kosovo Journalists for her article, “The Enduring Agony of Wartime Rape in Kosovo”, <http://www.balkaninsight.com/en/article/agony-of-wartime-rape-victims-endures-in-kosovo-05-28-2017-1>

<sup>270</sup> Interview, Edita Ostojić, psychologist, Medica Zenica, BiH, 1999, Women's Aid to Kosovo, Update, no.16, August 1999, p.7.

<sup>271</sup> Amnesty International, *Recommendations to states at the Global Summit to End Sexual Violence in Conflict*, (as above).

<sup>272</sup> Zeri, “Viktimat e dhunës seksuale po vdesin në pritje të mbështetjes nga shteti”, 27 April 2017, <http://zeri.info/aktuale/140845/viktimat-e-dhunes-seksuale-po-vdesin-ne-pritje-te-mbeshtetjes-nga-shteti/>

<sup>273</sup> Some NGOs have suggested that survivors can attribute the increase in their income generating activities.

<sup>274</sup> Amnesty International interviews with survivors, September 2017.

<sup>275</sup> Amnesty International, *Recommendations to states at the Global Summit to End Sexual Violence in Conflict*, Index: IOR 53/006/2014 May 2014, p.12

<sup>276</sup> Vjollca Krasniqi, “Women's Court for the Former Yugoslavia: Seeking Justice, Truth, and Active Remembering”, 1 June 2016, [http://www.zenskisud.org/en/pdf/Vjollca\\_Krasniqi\\_eng.pdf](http://www.zenskisud.org/en/pdf/Vjollca_Krasniqi_eng.pdf); [http://www.zenskisud.org/en/pdf/Karima\\_Bennoune\\_\(Interview\)\\_eng.pdf](http://www.zenskisud.org/en/pdf/Karima_Bennoune_(Interview)_eng.pdf)

<sup>277</sup> The Women's Court was organised over five years by Mothers of the Enclaves of Srebrenica and Žepa, Women's Forum, and Foundation CURE, BiH; Centre for Women's Studies and Centre for Women War Victims – ROSA, Croatia; Kosovo Women's Network; National Council for Gender Equality, Macedonia; Anima, Montenegro; Women's Lobby, Slovenia; and Women's Studies and Women in Black, Serbia.

panel of experts at the first hearing held by the Women's Court, which took place in Sarajevo on 7-10 May 2015.

"Flora" told Amnesty International, "I thank [former President] Atifete Jahjaga for sending me to the Women's Court. Only two of us went. I was five days in Sarajevo, and I was really glad I was there. I was really glad to give my statement about what they did in Kosovo, but I am really disappointed that [the perpetrators] have not all been punished." In September 2017, three survivors from Medica Kosova and two staff members attended a continuation of the Women's Court, this time, in Skopje.<sup>278</sup>

*What is critical about the Women's Court in Sarajevo was the way it was constructed for and with the full participation of women victims themselves. Women designed the court. Women testified. Women were the experts and judges. ...the organizers provid[ed] support to victims before, during and after the court met. ... [w]omen testified courageously of their experiences of losing family members to massacres, of mass rape and kidnapping, and of ethnic persecution. This feminist re-imagining of a court in which women victims are the central focus was very inspiring and thought-provoking to me as an international lawyer.*<sup>279</sup>

## 3.2 TRANSFORMATIVE REPARATION

**"Maybe there could be a special day – a day for survivors, for victims – in the official calendar?"**

Survivor at the challenging stigma conference, 2017.

There is an overwhelming sense of injustice amongst survivors, who feel - quite rightly - that successive governments have done nothing for them, and that they were - until recently - marginalised and forgotten - excluded from previous reparation legislation and denied access to justice.<sup>280</sup>

Recognizing the injustices suffered by women and girls affected by conflict-related sexual violence, in 2012 the UN Special Rapporteur on violence against women advocated that in order to truly change the lives of survivors, reparations should be transformative, stating: "*Even in non-conflict scenarios, acts of violence against women are part of a larger system of gender hierarchy that can only be fully grasped when seen in the broader structural context. Therefore, adequate reparations for women cannot simply be about returning them to where they were before the individual instance of violence, but instead should strive to have a transformative potential*".<sup>281</sup>

The UN-Secretary-General in his guidance notes that, "Reparations have the potential to be transformative and to assist in overcoming structures of inequality and discrimination."<sup>282</sup>

This aspiration is also reflected in the Nairobi Declaration, crafted in part by survivors of CRSV, and which urged, "*That reparation must drive post-conflict transformation of socio-cultural injustices, and political and structural inequalities that shape the lives of women and girls; that reintegration and restitution by themselves are not sufficient goals of reparation, since the origins of violations of women's and girls' human rights predate the conflict situation*".<sup>283</sup>

<sup>278</sup> Medica Kosova, *Women's court continues to gather women survivors of war crimes from the countries in the region*, 30 September 2017, [https://www.medicakosova.org/publications\\_post?id=124](https://www.medicakosova.org/publications_post?id=124)

<sup>279</sup> Interview with Karima Bennoune, reproduced from Peace is Loud, 20 May 2015, [http://www.zenskisud.org/en/pdf/Karima\\_Bennoune\\_\(Interview\)\\_eng.pdf](http://www.zenskisud.org/en/pdf/Karima_Bennoune_(Interview)_eng.pdf)

<sup>280</sup> While almost all survivors acknowledged the contribution made by former President Atifete Jahjaga, she was virtually alone amongst politicians in being singled out for praise.

<sup>281</sup> Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo\*, Reparations to women who have been subjected to violence (2010), UN Doc A/HRC/14/22, 23 April 2010, para 31, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.22.pdf>

<sup>282</sup> "Reparations should strive to be transformative, including in design, implementation and impact Sexual violence often results from and perpetuates patterns of pre-existing structural subordination and discrimination for both men and women. For women, it is often rooted in beliefs about women's subordination and male sexual entitlement, combined with the disregard for the equal enjoyment of human rights by women. Sexual violence against men is also rooted in stereotypes about masculinity and constructions of gender and sexual identity around power and domination. These inequalities can also aggravate the consequences of the crime. Reparations should strive to have a transformative effect on these inequalities, rather than reinstate or reinforce the structural conditions within society that uphold such practices and beliefs and that inform the perpetration of sexual violence", UN Secretary-General, Guidance notes, para 4, p.6.

<sup>283</sup> Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation, Article, 3, p. 2.

While laws, programmes, strategies and action plans and other measures are in place, including within the police and judicial system, to combat domestic violence, rape and other forms of violence against women<sup>284</sup> and violence within the family, these are clearly not enough.<sup>285</sup>

A report by Kosovo Women's Network, based on a survey of 1,315 young men and women, found that 70% had experienced some form of domestic or family violence, yet less than half the perpetrators had been punished.<sup>286</sup> Family violence appears almost routine; in October 2017, a woman wrote about the constant sexual harassment she had experienced from her first years at school, from members of her family and on the streets of her community, to the extent that it circumscribed the choices she could make about her life.<sup>287</sup> Only occasionally does family violence cause a public outcry: in October 2016, protests followed the posting on the internet of a video of a young girl, aged 16, being beaten by her uncle and two other men, for having played truant from school.<sup>288</sup> Further large demonstrations took place in 2017 at the sentence imposed on Nebi Berisha for the murder of his wife, Zejnepe Bytyqi Berisha. He had stabbed her multiple times, in front of their children, and badly injured their daughter. Zejnepe had repeatedly reported his violence to Kosovo police since 2002.<sup>289</sup> In November 2017, Kosovo was described as a legal black hole for women's rights<sup>290</sup>

Thus Amnesty International urges the government of Kosovo to ensure that the reparation provided to survivors of conflict-related sexual violence are, *"Reparations [that] aspire, to the extent possible, to subvert, instead of reinforce, pre-existing structural inequality that may be at the root causes of the violence the women experienced before, during and after the conflict"*.<sup>291</sup>

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<sup>284</sup> On 29 Jan 2017, for example, the Government finally approved the Action Plan for the Implementation of Resolution 1325, "Women, Peace and Security"; the Agency for Gender Equality is responsible for monitoring its implementation.

<sup>285</sup> Measures have been taken to ensure that KP officers dealing with cases of domestic violence may receive advice from experienced prosecutors or a gender advisor. However, while domestic violence advisors are in theory available in each police station, EULEX has found that they tend to be working primarily on trafficking cases. While each court should have a prosecutor specializing in domestic or family violence, in many local prosecutors' offices, they may be just a name, rather than someone who has been trained for this responsibility. In prosecutions for domestic violence, the judiciary have no sentencing guidelines, and fail to consider aggravating circumstances. The Kosovo Judicial Council plan for each court to have prosecutors and judiciary specializing in gender-based violence, this has yet to be realized, Amnesty International interview with EULEX prosecutors, September 2017.

<sup>286</sup> KWN, *No More Excuses, An Analysis of Attitudes, Incidence, and Institutional Responses to Domestic Violence in Kosovo*, 2015, <https://womensnetwork.org/documents/20151124105025622.pdf>;

<sup>287</sup> Pristina Insight, "Internalizing courage, unlearning entitlement", 27 October 2017

<sup>288</sup> "Protestors Demand End to Domestic Violence", 16 October 2016, <http://kosovotwopointzero.com/en/protesters-demand-end-to-domestic-violence/>

<sup>289</sup> Nebih Berisha was convicted of murder and light bodily harm, and sentenced to 12 years imprisonment by Prizren District court.

<sup>290</sup> Balkan Insight, "Vicious Cycle: Kosovo's Battered Women Syndrome", <https://www.balkaninsight.com/en/article/vicious-cycle-kosovo-s-battered-women-syndrome-11-03-2017-2>

<sup>291</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, para 31.

# RECOMMENDATIONS

## ACCESS TO JUSTICE

In order to ensure access to justice for survivors of conflict-related sexual violence and other war crimes and crimes against humanity in Kosovo, Amnesty International makes the following recommendations to:

### THE GOVERNMENT OF KOSOVO:

- Ensure that cases of rape and other crimes of conflict-related sexual violence are promptly, independently, impartially and effectively investigated and, if there is sufficient admissible evidence, prosecuted in accordance with international standards for fair trial;
- Ensure that the Special Prosecution Office of the Republic of Kosovo (SPRK) and specialised Kosovo Police War Crimes Investigators have sufficient specialised and trained staff and resources to prepare cases of CRSV for prosecution, with due respect for the rights of survivors;
- Expedite the adoption of a Standard Operating Procedure between police, prosecutors and NGOs working with survivors, so that investigations are carried out in a coordinated and gender-sensitive manner;
- The Kosovo Judicial Council should ensure that Kosovo's Courts use the 2013 Criminal Code for the legal qualification of cases of CRSV, including, where appropriate, crimes against humanity (Article 149);
- Amend the Criminal Procedure Code to:
  - Introduce measures that provide appropriate medical and psycho-social support and effective protection for witnesses before, during and after proceedings;
  - Include evidentiary rules applicable in proceedings related to CRSV, as set out in Rule 96 of the ICTY Rules of Procedure and Evidence, (Evidence in Cases of Sexual Assault), and ensure that prosecutors and judiciary are trained in their application;
  - Ensure that evidentiary procedures regulating pre-trial witness statements, and other evidence included in case-files transferred from UNMIK and EULEX, ensure the preservation of evidence and its admissibility in future criminal proceedings;
- Ensure that the Inter-Ministerial Working Group, in conjunction with relevant stakeholders, including survivors of CRSV, completes the draft National Strategy for Transitional Justice, without further delay;
  - To include a prosecution strategy for cases of crimes under international law, including in cases of conflict-related sexual violence;

### EULEX

- Ensure that all war crimes case files, including those inherited from UNMIK, and any associated documentation that might assist in future prosecutions, are transferred in a timely manner to war crimes prosecutors in the Special Prosecution Office; this should be accompanied by documentation

including summary information about any case-files retained by any residual EULEX presence after June 2018;

- Ensure, in conjunction with the relevant Kosovo authorities, that amendments are made to the current evidentiary regime regulating pre-trial witness statements and other evidence included in legacy case-files, so as to ensure the preservation of evidence for future prosecutions.

#### **UNMIK**

- Ensure that all case files and any associated documentation or evidence relating to reports of, and investigations into, crimes under international law still retained by UNMIK are transferred without further delay to EULEX prosecutors for review and subsequent transfer to the SPRK.

#### **THE EU:**

- Initiate discussions within the context of the high level talks on the normalization of the relationship between Serbia and Kosovo on mutual legal assistance between Kosovo and Serbia;
- In the interim, take measures to ensure improved cooperation between war crime prosecutors in Kosovo and Serbia, especially after June 2018, to enable some degree of mutually beneficial cooperation in war crime investigations;
- Enter an agreement with the Kosovo authorities to ensure that EULEX prosecutors may remain if necessary after June 2018, to ensure that all war crimes case files, including those received from UNMIK, are adequately reviewed, prepared and documented before being handed over to the SPRK;

In the context of Kosovo's aspirations towards membership of the EU:

- Include concrete benchmarks related to the justice agenda, including access to justice and reparation for civilian victims of war, including survivors of CRSV;
- Provide financial and technical support to ensure the establishment and implementation of effective witness protection and support, tailored to the needs of survivors;
- Encourage and, where necessary, provide technical assistance towards the completion of the Transitional Justice Strategy;
- Monitor progress and provide support to Kosovo through pre-accession dialogue and annual progress reports.

In the context of Serbia's aspirations towards membership of the EU, and in relation to Kosovo:

- Noting the culture of impunity that persists in relation to crimes under international law which took place in Kosovo, continue to monitor closely progress – or the lack of it – in investigations conducted by the Ministry of Interior War Crimes Investigation Service and the indictments raised by the Office of the War Crimes Prosecutor.

#### **THE GOVERNMENT OF SERBIA**

- Address the culture of impunity in Serbia, and within Serbia's institutions, related to war crimes and crimes against humanity in Kosovo committed by FRY and Serbian forces, which continues to deny access to justice to the victims, including the civilian victims of conflict-related sexual violence and enforced disappearances which took place in 1998-1999;
- Ensure the removal of institutional and other obstacles, including within the War Crimes Investigation Service, which have prevented the Office of the War Crimes Prosecutor from raising indictments against both those in positions of command or superior responsibility, who failed to prevent rape and other CRSV in Kosovo, as well as individual perpetrators, so they may be prosecuted in proceedings which meet international standards for fair trial;
- Ensure the independence of war crimes prosecutors and judiciary at the Special War Crimes Chamber at Belgrade Higher Court;
- Agree to a high level discussion facilitated by the EU to firstly ensure temporary arrangements for prosecutorial cooperation until, secondly, an agreement can be reached on mutual legal assistance, including in the exchange of evidence and other information relevant to prosecutions of war crimes, including war crimes of sexual violence in both jurisdictions;

- Ensure that the relevant authorities provide effective support and protection to Kosovo Albanian witnesses before, during and after any proceedings related to Kosovo at the Special War Crimes Court, in accordance with international standards.

## ACCESS TO REPARATION

In order to ensure effective, appropriate and gender-sensitive reparations for all the survivors of conflict-related sexual violence in Kosovo, without discrimination, Amnesty International makes the following recommendations to:

### THE GOVERNMENT OF KOSOVO

- Amend the law on reparation to ensure it meets international standards, reflects the real needs of survivors, and is guaranteed to all without discrimination including by:
  - Extending the temporal applicability of the law to 31 December 2000, to ensure consistency with the Law on Missing Persons and to avoid discrimination against women and girls who were raped in the aftermath of war;
  - Review the five-year period for the submission of applications to the Verification Committee after three years, extending it if necessary, to ensure that all survivors are able to apply, without time constraints that might prevent them from applying;
  - Remove provisions that prevent survivors receiving more than one war-related benefit, recognizing their right to compensation for each separate harm done to them; and ensure that survivors are not forced to choose between social transfers (for example an age-related pension which is their by right) and compensation for war-related harm;
- Ensure that survivors of rape and other forms of conflict-related sexual violence have access to appropriate forms of reparation, including:

### REHABILITATION

Rehabilitation programs should be designed to help fulfil the economic and social rights of survivors, including by ensuring the consistent, comprehensive, and quality delivery of necessary healthcare, including mental health care.

With respect to **health-care**

- Access to appropriate and free health care, including both medical and psychological treatment, should at a minimum, be provided for survivors without further delay, either through their inclusion in the Law on Health Insurance as beneficiaries of free health care, or through further amendments to the legislation (Law 04/l-172), to ensure access to primary, secondary and tertiary health-care without payment;
- Specifically, the law should provide survivors with adequate, free or affordable, appropriate and timely access quality healthcare and appropriate specialised, accessible psychological support and social services, without discrimination on the basis of status or ethnicity;
- Develop programmes to promote and provide information about the health and other services available to survivors;
- Develop and implement plans to train health-care providers on how to respond to the specific needs of survivors of sexual and gender-based violence;
- Ensure that survivors, and indeed all other women and girls in Kosovo, be guaranteed their sexual and reproductive rights, and have the right to access the full range of sexual and reproductive health and information services, including psychological support and counselling, emergency contraception, HIV counselling, testing and post-exposure prophylaxis, safe and legal abortion and maternal health support.<sup>292</sup>

### RESTITUTION

With respect to **employment**:

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<sup>292</sup> *Recommendations to States at the Global Summit to End Sexual Violence In Conflict*, Index: IOR 53/006/2014, May 2014, p. 12

- Contribute to women's economic empowerment through targeted and appropriate government programmes, providing priority to survivors of CRSV, rural women and other marginalized groups, including access to productive resources or credit, skills training, facilities for micro-credit and micro projects;
- Amend provisions in the law on rehabilitation and employment, removing the requirement to demonstrate physical disability, or introduce a new Article, so that survivors of CRSV may qualify for this assistance, and ensure the provision of appropriate measures to aid their recovery;

With respect to **property restitution and housing**:

- Efforts should be made by the Ministry of Housing to enable survivors to move from locations associated with war-time trauma;
- Provisions in the Law at Article 7 (2.8) should be invoked to enable older survivors, living on their own or at risk of homelessness, to be provided with appropriate accommodation in collective social housing.

## **SATISFACTION**

The president and prime minister should take a leading role in the campaign to challenge the stigma that has marred the lives of the survivors, by:

- Making a public apology to survivors of CRSV, acknowledging their suffering and the harm that was done to them, the effects of which they bear to this day;
- Announcing, following consultation with survivors, a national day of public acknowledgment;
- Supporting the development of educational programmes for schools and the public that aim to eradicate stigma and discrimination against rape and sexual violence survivors, regardless of gender, or any other factor, and break the cycles of victimization and disempowerment of women and girls.
- Ensure that appropriate legal and procedural measures are in place to ensure that present day gender-based violence is promptly and effectively investigated and prosecuted;
- Ensure that all authorities and those in position of power within communities refrain from invoking any custom or tradition or belief which discriminate against or stigmatise or silence survivors of CRSV, and publicly declare the government's intention to prevent, investigate, prosecute and punish all forms of violence against women.

## **TO THE EU**

- Continue to support initiatives and programmes that assist survivors of CRSV with respect to health care, including psychosocial assistance and employment, including through funding relevant providers and NGOs delivering these services;
- Through the pre-accession programme, and in the context of reforms required by the European Commission, to provide authorities in Kosovo with the technical assistance and funding to ensure:
  - (Within the context of public health sector reforms which aim to provide adequate primary health care services and mandatory health insurance;) the inclusion of programmes to ensure that survivors of CRSV have access to the highest attainable state of health;
  - The development of employment programmes, focussed on the economic empowerment of women, including programmes which focus on CRSV survivors and other socially-excluded women;
  - Monitor progress, including through concrete benchmarks, on the realization of social and economic rights for civilian victims of war, including survivors of CRSV;

## **TO THE UK:**

- Provide continued support for initiatives and programmes which challenges the stigma which continues to affect survivors of CRSV.

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[info@amnesty.org](mailto:info@amnesty.org)



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# “WOUNDS THAT BURN OUR SOULS”

## COMPENSATION FOR KOSOVO’S WARTIME RAPE SURVIVORS, BUT STILL NO JUSTICE

Almost two decades after the end of the war in Kosovo, survivors of war-time rape will, from January 2018, receive long overdue recognition of and a measure of reparation for the harm they suffered during the 1998-9 armed conflict. The legislative changes making this possible, although welcome by survivors, fall far short of international standards for reparation and the real needs of survivors. Despite chronic illnesses and often-debilitating psychological trauma, survivors will continue to be denied access to free healthcare and adequate rehabilitation, including psychological support, they so desperately need.

But reparation is perhaps the only remedy survivors will receive for their suffering. Despite the widespread and systematic nature of conflict-related sexual violence in Kosovo, perpetrators have not been brought to justice in Kosovo and survivors fear that the crimes committed against them will remain unpunished.

In Kosovo, investigations and prosecutions by UN, and subsequently EU, prosecutors have failed to deliver justice. Now, as Kosovo’s under-resourced war crimes prosecutors take over, it is questionable whether they can remedy past mistakes and overcome multiple obstacles to justice.

It is critical that long-delayed reparation fully addresses the physical, psychological, economic and social impact of conflict-related sexual violence on the lives of survivors. In addition to the monthly compensation survivors will receive, the Kosovo authorities should ensure that survivors are provided with adequate health care, rehabilitation and access to employment and freed from the stigma which has overshadowed their lives, to enable them to rebuild lives so brutally interrupted by war.